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LATER CONTRIBUTIONS CONCERNING THE PROTECTION
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with
AUTOBIOGRAPHICAL SKETCH, PORTRAIT
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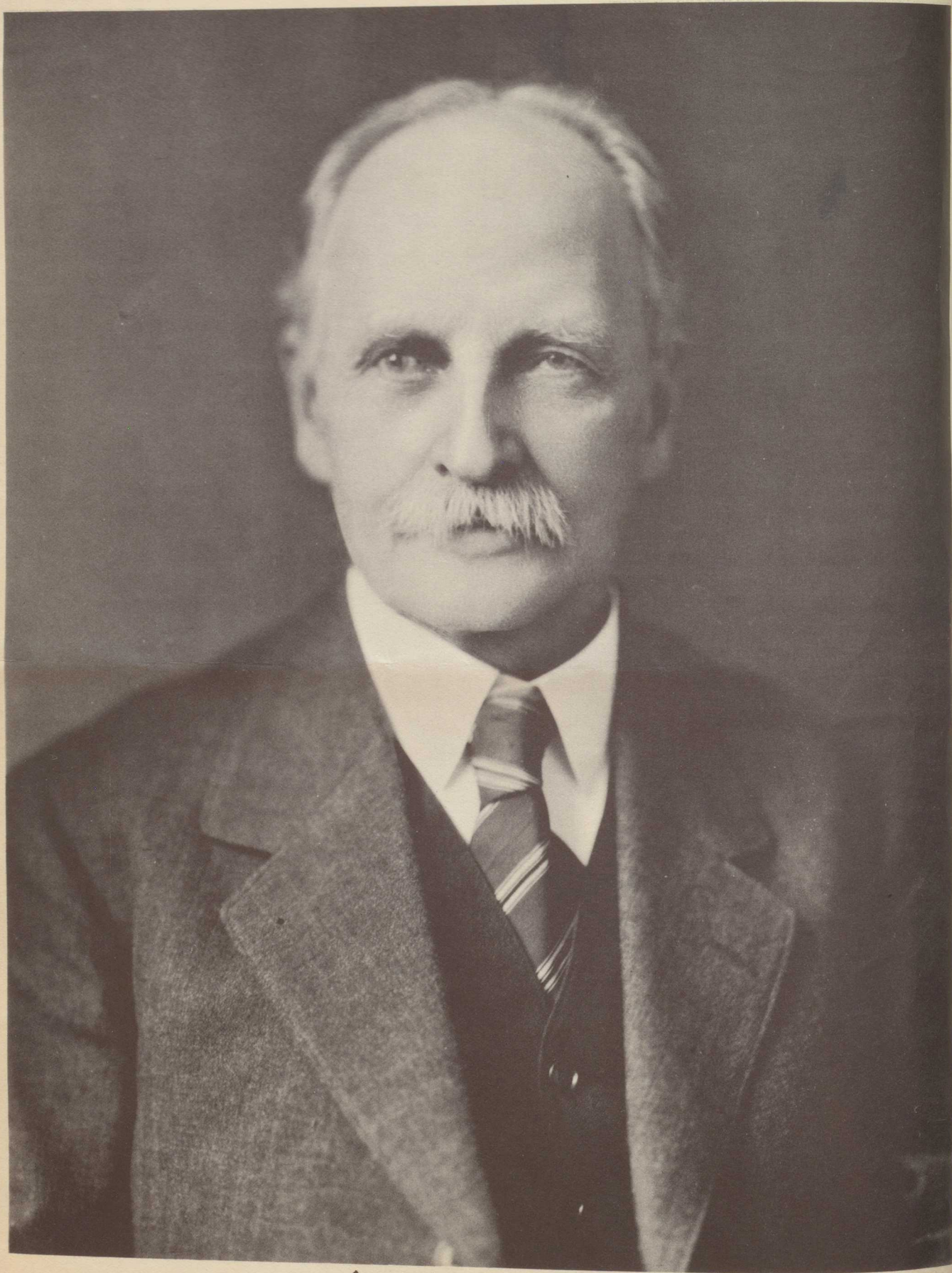
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Thorvald Solberg

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"TOWN & COUNTRY REVIEW"
London, England, September, 1937.

THORVALD SOLBERG

An Autobiographical Sketch

I was born on April 22, 1852, in the mid-west state of Wisconsin, at Manitowoc (Indian name said to mean spirit land), about 75 miles north of Milwaukee. Beginning as a fur-trading post in 1795, it began to settle up as a village in 1836, less than ten years before my father and mother arrived from Norway. The first seventeen years of my life were spent there and, as a boy, I remember the rolling country of our county, covered back from the shore with pine and hard-wood trees, primeval forest, but entirely lacking any surface rock. There was then very little clearing. Two vivid remembrances are the frequent encountering of Indians, and the distressing need whenever entering the wood, that face, neck and hands should be adequately covered to escape the bites of pestiferous insects.

In my seventeenth year, in 1869, I took my first long journey, from Manitowoc to Knoxville, Tennessee, going by steamer to Chicago and from there by railway. I went with and at the request of a friendly neighbour and served a sort of apprenticeship in his book shop.

There I made my first acquaintance with book catalogues, and learned to know and greatly respect the honoured name of Quaritch of London. Boston was then the intellectual centre of the United States, so my removal to the capital of Massachusetts was self-determined, and in 1872 I entered Campbell's book shop on Tremont Street. I for the first time had opportunity to enter a theatre, saw and heard for six nights in succession the wonderful Madame Pauline Lucca; and later became acquainted with the famous Boston Symphony Orchestra.

During 1874 I was employed in the book-selling house of George H. Smith of Detroit, Michigan. While there I compiled an index of many thousand references to the Annual Book Trade Catalogue.

From there my next move was to the capital city of Washington, where I entered the Library of Congress on May 1, 1876. It was to be my fate to remain in the service of that great institution (with a break of eight years to be explained later) until my 78th birthday, on April 22, 1930.

My next important milestone was my marriage to Mary Adelaide Nourse of Lynn, Massachusetts, on August 1, 1880. That date marks the beginning of a wonderful married comradeship of nearly forty year's duration. My wife died at Washington on March 20th, 1920. We had no children.

✓ Taking up the chronological sequence of the outstanding events in my uneventful life, the month of February of 1884 should be recorded. On the 7th of that month began my connection with "The Nation" of New York, as a contributor for a period of some twenty-five years. This work as a writer for that well-known

*My first con-
tribution to
The Nation, Feb
7, 1884.*

X
journal, was certainly one of the best and most effective factors in my character building, because of the intimate contact maintained with the fine personality of Mr. Wendell Phillips Garrison (son of the great anti-slavery agitator, William Lloyd Garrison) who was its editor for forty-one years. My wife and I prized his helpful friendship up to his death.

In 1887 came the fortunate opportunity to begin my trans-Atlantic crossings—which became one of the outstanding factors in my life development. It came about through the efforts of my friend, Mr. Charles C. Soule, the well-known Boston publisher. At his instance I obtained a six-months' leave of absence from the Library of Congress for the purpose of visiting the Capitals and university towns of Europe in order to compile the literature of the codes and annual law enactments of the Continental countries. It proved a very interesting episode, and the venture a financial success, my catalogue and carefully compiled data enabling Mr. Soule to supply many Law Libraries in the United States with books they lacked and needed at a reasonable profit for him.

It led him to urge me to make a more permanent arrangement for service abroad for the Boston Book Company. I was loath to sever my connection with the great national library, and held back for some time; but on June 8, 1889, I set sail from New York on the S.S. Umbria, in company with Mr. Soule, he for a short business trip through Ireland, Scotland and England, and I to continue an extended Continental book-buying trip up to September 13th.

At my own suggestion, this service was in a new field of endeavour,—garnering for American libraries sets of the English Journals which had been included by Mr. William Frederick Poole in his now well-known "Index to Periodicals." These sets we agreed to carefully collate and supply complete and perfect. This work involved annual trips of three or four months each from 1889 to 1892, and visiting cities in the United Kingdom, and on the Continent, sometimes a hundred, and making searches in several hundred book shops. It was interesting work, but strenuous and brought on a collapse in London, compelling cessation of work and a return to Boston in October, 1892. Absolute rest from any mental or physical effort being obligatory, my wife and I sought an out-of-door's life in a health-giving environment, and on January 28, 1893, we sailed for the Balearic Islands.

It proved a successful experiment, but it required four years to obtain complete recovery of my health. During three of these years we lived in the old monastery, the "Cartuja," at Valdemosa, Majorca. This proved the outstanding episode of our married life. My wife published in the New York "Nation" (1893-1895) seven articles descriptive of the Balearic Islands, setting out our experiences during our stay.

We returned to Boston on October 11, 1896. I have myself visited the islands twice since, for three months in 1923, and four months in 1930. I was sufficiently interested to collect a large number of modern books on the archipelago in many languages and compiled a catalogue comprising 747 titles, which was printed in 1929, with preliminary text, as "Notes on the Balearic Islands."

On my entry into the Library of Congress in 1876, I soon became interested in copyright,—in the legal protection of literary

1st. Soule
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trips
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Sept. 15
1889 to
1892
collapse
London
Ret to
Boston
Oct. 1892
B. I.
Jan 28
1893
Ret to Boston
Oct. 11, 1896

property. The duty of receiving and caring for the works deposited in the Library of Congress under the copyright law, and the correlated task of registering claims of copyright in such works, rested on the Librarian. I was for a short time given work in that division of the library. I began the compilation of a catalogue of the books and periodical contributions on this subject. It was first printed in instalments in the weekly pages of the "Publishers' Weekly" for 1886 (about 1,200 titles) and was reprinted in Mr. Richard Rogers Bowker's quarto volume: "Copyright, its Law and its Literature," New York, 1886.

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X That catalogue I took with me on several visits to European libraries and extended its contents to more than 3,000 titles. I also collected the books and pamphlets themselves and had accumulated a very large number. These I catalogued very completely (my printed volume being only what librarians would call a "short-title finding list") specifying carefully the contents of each work. All the books and my considerable manuscripts were destroyed on December 6, 1918, when my house and its contents were consumed by fire.

Register of Copyrights.

X After my return to the United States in 1896, with recovered health, I received my appointment to a new position, created by Act of Congress of that year, namely, Register of Copyrights. I took office on July 1, 1897, and left that office on April 22, 1930, on my 78th birthday; thus having served nearly 33 full years, without break, except occasional vacations or absences abroad. It thus became my life work.

My obvious first task upon assuming charge of the Copyright Office was to organise a suitable and efficient working staff to begin to cover the serious arrears of registration, the result of many years of inadequate working force, and to so plan the daily office work as to enable prompt and continuous service of a satisfactory character. The second outstanding defect to be remedied was to secure in place of inadequate copyright laws, new and improved copyright legislation; and the third was an equally urgent need for attempting to bring about better and more just international copyright relations, especially between England and the United States.

These self-assigned endeavours required, besides the daily routine work of administration, the compilation of books and pamphlets containing copyright information. A list of many of these is to be found in the American "Who's Who" and a selection in the British "Who's Who." In addition it has included innumerable contributions to newspapers and periodicals on subjects relating to Copyright.

Want of space prohibits any enumeration of these works here. But I may mention a few of special significance. A compilation of the texts of all copyright legislation, under the title "Copyright Enactments of the United States, 1783-1906." "Copyright in Congress, 1789-1904: A Bibliography and Chronological Record of all Proceedings in relation to Copyright"; a large 8vo. volume of 468 pages. A considerable list of similar books were all my own personal work, including the text matter of 32 Annual reports as Register of Copyrights. Each yearly volume contained a summary of copyright legislation enacted and proposed. I personally drafted innumerable proposals for copyright legislation, i.e. copyright bills.

The extensive Catalogue of Copyright Entries from 1898 to date, now containing very many volumes, was my individual, personal creation. It is, I think, not matched as a National record of the literary, musical and dramatic output of any country. It has been issued in parts, usually weekly or monthly, but in the case of books, twice weekly. Another bibliographical work carried out under my planning and direction is a Catalogue of Copyrighted Dramas, from 1870 to 1916. It contains more than 56,000 titles of dramatic compositions with careful index, 3,500 pages in two quarto volumes. There should be added also the compilations of Court decisions with respect to copyright, now extending to 4 volumes.

The international aspect of copyright assumed special importance, and I was called upon to attend conferences with respect to the international protection of literary and artistic works, beginning with Barcelona, Spain, in 1893, and at intervals later on at Antwerp, Dresden, Luxembourg and Paris (twice, in 1900 and 1925). In 1908 I was present at the copyright congress in Berlin and, in 1928, at Rome, in both as the official representative of the United States.

For a long period my favourite recreation has been foreign travel, and in addition to repeated visits to England, France, Germany, Holland, Belgium and Italy, I have been privileged to see something of Morocco, Algeria, Egypt, Palestine, Greece, Turkey, the Scandinavian countries (including Iceland) as well as the Canary and Madeira Islands, Malta, the West Indies and Bermuda and have crossed the Atlantic ocean in all thirty-eight times.





Number ONE — ADDENDA

THORVALD SOLBERG :

RETIREMENT AS REGISTER OF COPYRIGHTS, 1930.

Statement by HERBERT PUTNAM, *Librarian of Congress*.

The retirement on April 22 (his seventy-eighth birthday) of Thorvald Solberg brought to a close a public service which had aggregated 46 years, the last 33 of them in an office quite unique, that of Register of Copyrights. For a description of it, of the character and responsibilities of the office, of the qualities Mr. Solberg brought to it, and of his achievements in it, there is no adequate opportunity within the necessary limitations of this report. All are, however, familiar, as was his personality, to the interests concerned with the protection of literary property, and intimately known to the group most influential in it, both here and abroad.

1876-1889;
1897-1930
43 years in all

His preparation for the task has been rather through the initiative of his own tastes than academic. Determined to devote himself to books in some useful relation, he became in his early years a dealer in them. But the commercial side not particularly appealing to him, he accepted a position on the staff of the Library of Congress (while it was still at the Capitol), and held it for 13 years (1876-1889), withdrawing, however, for a period of employment with the Boston Book Co., largely as its European representative. Overwork then occasioned a breakdown, from which he recuperated through a sojourn of three years in the Balearic Isles, an experience inducing an interest in the islands which has always continued, and led to the compilation of his comprehensive bibliography of them.

In 1897 the position of Register of Copyrights was created and he was appointed to it, the first and thus far the only incumbent of that post. Consideration of him for it had been actuated by a proved interest in the subject evidenced by a bibliography of it issued in 1886 and by attendance at the international conferences at Barcelona in 1893 and at Antwerp in 1894.

Until the creation of the office of register, with a distinct staff under him, operations concerning copyright were merely incidental to the function of the Librarian and such assistants as he might detail. When Mr. Solberg took the office the first tasks confronting him were, therefore, to devise and put into immediate operation an adequate system of financial accounting for the fees received; to invent routine methods of handling expeditiously the incoming flood of material, that in the succeeding years has amounted to more than 7,000,000

✓ articles; and to organize, train, and develop a staff of assistants. To this he applied himself with indefatigable industry and tireless devotion. The volume of work done is apparent on noting that the fees received, applied, and turned over to the Treasury from the day he took office until he retired have amounted to \$3,988,119.20, the number of registrations made 4,116,560, and the staff has increased from a bare dozen to over 100 in number. As against its routine expense (excluding the cost of the Copyright Bulletin) the office has been self-supporting, and in addition a surplus in excess of \$600,000 has been added to the Government's miscellaneous receipts.

Incidentally he labored incessantly for two major general objects, (1) the improvement of our copyright law, and (2) the extension and definition of our international relations in all that involves the recognition and protection of literary property. The conferences and hearings that preceded the general revision of our own law enacted in 1909 were arranged for by him, and he served throughout as the practical executive and recorder of them. Every effort—and the efforts have been varied and persistent—toward reciprocity in our international relations in the field of copyright, has had his sympathetic interest, and, within his convictions of the feasible, his active support. His final two years were largely concerned with the effort, still pending, to bring the United States into the Union of Berne.

Protection for authors and their publishers involving often re-trenchment of the public domain (of art and literature), extension of it naturally encounters resistance from the interests benefiting in the use of such material without compensation to its creators. The development of mechanical devices for such use has intensified this resistance, which during Mr. Solberg's incumbency became obstinate, and the ensuing controversies at times very fierce.

His own relation with them was most fortunate, his knowledge of the history of copyright, his familiarity with the law and the procedure in every jurisdiction, but, more than all, his obvious conscientiousness, and his transparent candor, veracity, and integrity, won the respect even of those annoyed because he could not support their pretensions.

He retires, therefore, with an assurance of general esteem as well as a record of achievement which should constitute a gratifying annuity for the period of leisure now in prospect.

— Reprinted from the Report of the Librarian
of Congress of 1930, pp. 21 - 23

SCANDINAVIA

Thorvald Solberg, the First Register of Copyrights

(By J. C. M. HANSON)

FEW Americans of Scandinavian extraction can claim, as Mr. Solberg, to have attained the highest possible distinction in their chosen field of endeavor. Mr. Solberg, while he spent many years as a book dealer and librarian, began quite early in his professional career to study copyright and the copyright law, and when in 1897, in connection with the reorganization of the Library of Congress, a Register of Copyrights was to be appointed for the first time, there was no man in America better qualified for the place than he. Mr. John Russell Young, then Librarian, offered him the position, and it was accepted. Mr. Solberg is accordingly our first Register of Copyrights, having served continuously since July, 1897. What he has accomplished during these years will be referred to later in this article.

Mr. Solberg was born at Manitowoc, Wis., on April 22, 1852. In *Who's Who in America*, his father's name is given as Charles, and his mother's as Mary, born Larson. Both parents were natives of Norway. Solberg spent his boyhood in Manitowoc, and was educated in the public schools of that city. Already in 1869, he left Wisconsin, going down into Tennessee with some people from his native city who were engaged in the book business. He did not remain in the South for any length of time, but went to Boston in 1873. Then he spent a year or more in Detroit and Omaha, but returned to the East in 1876, where, on May 1st, he entered the service of the Library of Congress. This was in the



THORVALD SOLBERG

year of the great centennial exhibition at Philadelphia, a year which witnessed among other events, the organization of the American Library Association. Had Mr. Solberg joined the association immediately, he would have had the rare distinction of being one of the few surviving charter members. His membership number, 519, would indicate that he joined a few years later. Solberg continued with the Library of Congress until 1889, serving for a part of that time as cataloguer of the Law Library. The writer can personally testify

to the fact that some of the best work laid down in the old catalogue of the Library of Congress, now absorbed and replaced by the larger catalogue begun in 1898, was in the handwriting of Mr. Solberg. It was our practice when we found entries in certain handwritings to pass them with only a cursory revision, while others had to be scrutinized very closely. It was al-

ways a pleasure to meet with Mr. Solberg's entries. A cataloger then knew that he would have easy going. Solberg was not one of those superficial bibliographers, who, chiefly by means of scissors and paste, seem to accomplish a great deal, but are in reality only piling up work for others. When Solberg took up a bibliographic problem, he saw it through so far as that was humanly possible with the resources then at hand.

In 1887, Mr. Soule of the Boston Book Co., arranged with Mr. Solberg to take six months leave of absence from the library and visit the various capitals and

university towns of Great Britain and the Continent, for the purpose of collecting data on foreign codes and what corresponds to our American session laws. He writes in regard to this tour: "It was an interesting experience and brought me in contact with distinguished and interesting people, because I went with very good letters of introduction, and there was much sympathy felt for my errand and a great cordiality in trying to help me to accomplish a great result. I went as far North as Stockholm, and as far East as Budapest, but the work was hard, and I finally had to cut out Russia and Greece, which has always been a matter of regret."

On his return to America, Soule was anxious to secure Solberg's services for the Boston Book Co., and he succeeded in 1889 in persuading him to organize the service, which later became known as the Library Department of the Boston Book Co. Mr. Solberg had suggested that he try to pick up complete sets of the periodicals known as the Poole periodicals, because they were indexed in the General Indexes started by Dr. F. W. Poole while a student at Yale University, and later continued by the American Library Association, and finally taken over by H. W. Wilson & Co., of New York City.

This required frequent visits to Great Britain, and much hard work in the various book centers of England, Scotland, other European countries and America. The work was in fact, so exacting, that it brought on a physical breakdown in 1892.

Already in 1880, Mr. Solberg had married Miss Mary Adelaide Noursc of Lynn, Mass., who now accompanied him to the Balearic Islands, where he was to rest for a year. Instead of one year, however, it took four years before he had succeeded in regaining his strength. Both he and Mrs. Solberg always referred to their stay in the Balearics as one of the most interesting experiences of their joint life. Together, they studied the literature of the islands, the people and the monuments. Here they met and associated with persons like Campaner, the great authority on Spanish numismatics, the Austrian Arch-Duke Ludwig Salvator, who was a very near and very friendly neighbor. They visited Minorca and

checked up the pre-historic monuments described in Cartailhac's book which had just then appeared.

Solberg's many visits to Europe before and after 1892, his official position and standing as a leading authority on copyright law, brought him into contact with many well known and interesting people. He has mentioned Bernard Shaw, Mr. and Mrs. William Archer, the translators of Ibsen, and many others.

It was not only through his special knowledge of copyright that he had attained distinction. His taste for bibliography extends back to his first years in Washington, and his bent toward Scandinavian mythology, history and related subjects soon led to publication of a part of the data compiled by him in his leisure hours. The Boston Public Library in its *Bulletin*, Vol. 6, 1884-85, Page 74 to 84, published his Text editions of the two Eddas. This little compilation brought him commendation from men like Carl Möbius of Kiel, Konrad Maurer of Munich, Prof. Bergmann of Strassburg, and others. This bibliography had been selected from some eight hundred titles of Norse mythology which he had been collecting prior to 1884, but which had not been published.

In the same year appeared also the bibliography which forms a part of R. B. Anderson's translation of Frederik Winkel-Horn's *History of the Literature of Scandinavia*, and which presents a selected list of books in the English language relating to the Scandinavian countries. Concerning this bibliography, it may be of interest to note that the complete list from which the selection was made consisted of nearly 12,000 titles. It was Mr. Solberg's plan to include any book in any language which dealt with, or in any way threw light upon, the Scandinavian countries. In other words, he aimed to do for all the Scandinavian countries what Hjalmar Pettersen has attempted to do for Norway in the volume, *Norway and Norwegians in the Foreign Literature*, part of his *Bibliotheca Norvegica*.

Even during his busiest years, when engaged in the organization of the Copyright office, Mr. Solberg found time to add to this bibliography. It was kept in his house

out on Glenn Echo Heights, together with his splendid private library, numerous manuscripts, including the monumental bibliography of copyright which only he could have compiled. All of this, books, manuscripts, irreplaceable keepsakes, mementoes, art objects and curios, were swept away one day a few years ago when some careless individuals neglected to put out a camp fire on the Heights near Mr. Solberg's house. The loss of the house with practically all its contents must have been a severe blow. Mr. Solberg was never heard to complain, however. Only in a recent letter there appears a note of regret. Speaking of the fire, he says, "I regret more the loss of my bibliography of copyright than anything else, because I feel that it is not probable that any other person will come forward who would be willing to give the same endeavor to producing a complete bibliography of this subject. I visited all the great libraries of Europe, working hard (14 days in the Börsenverein Library at Leipzig, and in the special collections in Paris, Amsterdam and London, of course). I had books in some thirteen or fourteen languages, and certainly a more extensive collection than existed in any one place of which I had knowledge, including these great libraries. I had all the printed documents on copyright in relation to Great Britain from 1800 to date, and I had a more complete collection of the fragmentary documents relating to the legislation of copyright in Germany than was found either in the Börsenverein Bibliothek, the Royal Library of Berlin, or the Library of the Reichsgericht at Leipzig. It was my intention to compile and publish a really constructive bibliography, arranging the material chronologically, and all contents being carefully given in addition to all collations. The index was on an unusual scheme, to give the references not only to the books, but to the very chapter and page so that even chapters in other books not relating to copyright were not overlooked."

Solberg's authorship has been chiefly confined to his specialty, the copyright law. Space will not permit an enumeration of all the books, pamphlets, reports and bills of which he is the author. *Who's Who in America* lists a number of the most import-

ant. In October 1923, he drafted a bill to amend the copyright law in order to permit the United States to enter the International Copyright Union. This draft should have the approval of all educational institutions and the public in general. Nothing would please Mr. Solberg more than to see America enter the International Copyright Union. He has said that it must come sooner or later, and the sooner the better. In view of the new copyright law for Canada, which went into effect on January 1st, 1924, it is of great importance that the United States take favorable action on the bill proposed. If passed, it will be the crowning consummation of his ambitions and hopes to secure for the United States its proper place among the nations with respect to literary property.

A man of many and varied interests, Mr. Solberg has not confined his bibliographic investigations to Copyright and the Scandinavian countries. Among the manuscripts destroyed in the fire was a bibliography of the Bronte sisters and one of *Hamlet*. At present he is compiling a list of all the books and articles on the Balearic Islands which he hopes to print as number one in a series of regional bibliographies to cover sections visited by him, and which have particularly interested him. Among the regions to be covered are the Italian lakes, the Dolomites and the Riviéra. It is to be hoped that he will have the time and strength to realize these plans.

He has been urged to publish something in the nature of an auto-biography. It is in the hope that he may be prevailed upon to do this that the writer refrains from giving a detailed account of his professional career in Washington. For over thirteen years, 1897 to 1910, it was my privilege to serve as one of his colleagues at the Library of Congress. What especially impressed itself upon me during these years, was his firmness, his uncompromising stand for what he deemed right, his sterling integrity and unselfish devotion to his work. There came in 1899 a crisis in the history of the Library, when for a time it seemed that a certain political appointment, likely to check the future development of the institution, perhaps for all time, was unavoidable. Mr. Solberg was one of the very few at that

time who clearly foresaw that should the Library of Congress become the real National Library of the United States, and assume its place as a great center of co-operative activity and scholarly research, to which writers and investigators, educational institutions and learned societies, here and abroad, might look for help and guidance, there was only one thing to do, to secure as administrative head, the strongest and best man available.

It was chiefly due to his wise, energetic and unselfish effort, combined with rare courage and initiative, at a time when others had given up all hope, that the American Library Association and leading libraries were aroused to a realization of what was at stake. As a result, the President was persuaded to reconsider an action already taken, and the man who has since served with such distinction, and who has brought the Library of Congress to a place where it will rank as one of the three great national libraries of the world, was induced to accept leadership.

Like Dr. Stejneger, of the National Museum at Washington, Mr. Solberg is now over seventy, but still hale and hearty, full of initiative and energy, alive to all social, political and civic movements, always on the side of justice and fair play, and an implacable enemy of graft, corruption, deception, false display and pretense of all kinds.

Always an admirer of nature, he still sticks to his residence on Glenn Echo Heights, which overlooks the Potomac and the distant Virginia hills. Where years ago he tramped many a mile, usually accompanied by his faithful friend and colleague, David Hutchenson, then superintendent of the Reading Room in the Library of Congress, he still manages to enjoy the out-of-doors, being an experienced driver both of horses and motor cars. It is doubtless this ability to mix recreation with work that sustains him, and enables him to continue his exacting duties after having passed three score and ten.

Since he took charge of the Copyright office, it has been fully organized on sound business lines. On completion of his twenty-fifth year as Register, a little over a year ago, the office had paid into the United States treasury, over two million dollars in copyright fees. From a half dozen assistants, the force of the office has been increased to ninety-six, with a salary budget of over \$112,000.

Some men are prone to judge others by their income and financial standing. I am not familiar with Solberg's financial status. In the annual reports of the Librarian of Congress, I have read the budget of his office, and know therefore approximately the salary which he has been receiving. The figures are not impressive, even in the academic world where compensation runs so low. I have always had the impression that Solberg possessed qualifications which, had he desired to utilize them for that purpose, would have made him a very wealthy man. I also know that as a man of wealth, he would quite naturally have used his means for the betterment of his fellowmen. Those, who know him best, will agree that when, instead of selecting a profession likely to lead to great wealth and high standing in the financial world, he chose rather a career of service and intellectual endeavor, that choice placed him in a position where he could accomplish more good for his country and the world, and be of greater service for learning and scholarship, than had his endeavors centered on the accumulation of a great fortune.

Ivar Aasen once expressed the sad thought, that when a man has reached the climax of his power and efficiency, it is usually time for him to step down and out. It will be a sad day for the Copyright office when Solberg is compelled to relinquish the reins. Let us hope that there are still years of active service in store for him, and that when he retires to enjoy his well-earned *otium*, it will be as *Register emeritus*, still in touch with his life work, always glad to serve and glad to learn.



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Additions to List of Contributions to Nation.

V. 67. Notice of 16th annual session of the Association Littéraire et Artistique Internationale, Antwerp, August 18-25 1894, anon. Note, p. 64 $\frac{1}{2}$ col. - Notice of Le Droit d'Auteurs, p. 82, $\frac{1}{3}$ col. - Our Foreign Copyright

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Note. Proof copy printed for discussion on March 30th.

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Note. Submitted by request to the Pan-American Financial Conference, 1915.

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"The Copyright Congress at Antwerp" (signed
T.S.) pp. 284-286, 5 1/2 cols. — Notice of "Span
ien in Wort und Bild" Chapter by the Arch Duke
Rudwig Salvator" anon. note p. 428, 1/2 coll.

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enactments, 1783 - 1904, with notations of modifications, amendments, and repeals. 53 pp. 4°. Washington, Govt. Pr't. Off., 1904.

Note. Limited edition printed on writing paper 10 by 12 inches with wide margins for annotations.

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Note. Contains (Appendix): Bibliography of the International Copyright Union, pp. 47 - 59.

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Should United States Join International Copyright Union? In "Congressional Digest," 4°. Washington, October, 1927, pp. 267 - 268.

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Note. This document was reprinted in the "Congressional Record," 50th Cong., 2d sess., v. 20, no. 70, for March 6, 1889, pp. 2975 - 2977, and was translated into French and printed in "Journal général de l'imprimerie et de la librairie." 8°. Paris, 77e année, 2e série, no. 32, 11 août 1888, pp. 157 - 160.

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Affidavit of American Manufacture. (Suggesting that it be filed in court before suit for infringement is brought). 2 pp. 12°. Washington, n. d.

Amending the Copyright law. Statement before the Committee on Patents of the House of Representatives, Dec. 10, 1913. On the bill H. R. 9897. 16 pp. 8°. Washington, Govt. Pr't. Off., 1913.

Note. The bill proposed the deposit of one copy instead of two of works by foreign publishers. Became law March 28, 1914.

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..... Same. Addenda. Dec. 4-6, 1906. 2 pts. 12 & 27 pp. 4°. Washington, Govt. Pr't. Off., 1906.

..... Same. Amendments proposed. Part II. With Criticisms and Suggestions. 107 pp. 4°. Washington, Govt. Pr't. Off., 1906.

..... Same. Part III. Comment and Criticisms by the Copyright Committee of the American Bar Asso., and the Association of the Bar of the City of New York. 35 pp. 8°. Washington, Govt. Pr't., 1906.

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922 titles

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Note. This bill was the first of the series of bills which resulted in the Copyright Act of March 4, 1909.

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Note. Contains; Copyright laws passed by the original states, 1783 - 1786; by the United States, 1790 - 1905; Private Copyright Acts, 1828 - 98; by the territorial possessions of the United States; also, Presidential proclamations and copyright treaties; State laws to Protect Dramatic and Musical works; Opinions of the Attorneys General and decisions of the Treasury Department in regard to copyright, etc.

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..... Same. Copyright in Canada, Acts 11 and 12 George V, ch. 24, (Effective January 1, 1924.) 111, 55 pp. 8°. Washington, Govt. Pr't. Off., 1924. (Copyright Office, Bulletin no. 20.)

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Note. Contains a List of all Copyright Bills, Reports and resolutions; public and private copyright laws; petitions, memorials, etc., from 1789 to 1904, and a Detailed Statement of the Congressional action upon each proposal. Also Texts of all Copyright Bills pending February, 1905.

Copyright in England. Instructions for Registration for Copy-

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Note. Appendix: A list of all copyright enactments, 1709 to 1902, with Notations of Modifications, Amendments, and Repeals, etc. Compiled by Thorvald Solberg, pp. 69 - 87.

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Note. This compilation has been reprinted with additions as required in later years.

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X

THORVALD SOLBERG

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Note. Professor Henry Van Dyke, of Princeton University.

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*Works planned by Thorvald Solberg and carried out
under his direction.*

Catalogue of Title Entries of Books and other articles deposited under the copyright law. Published by Acts of Congress of March 3, 1891, June 30, 1906, and March 4, 1909.

Note. Issued in 4 parts. Part I, Books proper, 3 times each week; Pamphlets, etc.; contributions to periodicals; lectures; dramatic compositions; motion pictures. Monthly. Part II. Periodicals, quarterly. Part III. Music, monthly. Part IV. Works of fine art, pictorial illustrations, photographs. Monthly. From 1898 to 1929.

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Prepared at the request of the Authors' League of America.

December 1, 1924

DRAFT FOR

A BILL TO AMEND AND CONSOLIDATE THE ACTS RESPECT- ING COPYRIGHT AND TO PERMIT THE UNITED STATES TO ENTER THE INTERNATIONAL COPYRIGHT UNION.

Who may secure copyright as first owner of the work.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That copyright is secured by this Act for all the writings of authors from the time of the making of their works, whether unpublished or published, for the term of copyright protection hereinafter provided. Such copyright shall vest in the author of any such work immediately upon the making of the work and shall not depend upon the accomplishment of any conditions or formalities whatever: *Provided, however,* That for the purposes of preserving evidence and facilitating transfers of copyright and rights thereunder, any author or his executors, administrators or assigns may obtain registration for such work upon complying with the provisions of this Act, and the certificate of such registration, under seal of the Copyright Office, shall be admitted in any court as prima facie evidence of the facts stated therein.

Copyright to vest in author, upon creation of his work.

SEC. 2. That the copyright secured by this Act shall extend to the work of an author who is a citizen or subject of a foreign state or nation:

Foreign author may obtain copyright.

(a) When an alien author shall be domiciled or a bona fide resident within the United States during the whole or any substantial part of the time of the making of his work, or at the time of the first publication or first public performance of his work; or

Resident alien.

(b) When such author is a citizen or subject of any country within the International Copyright Union, or has first published his work in some country which is a member of the said Union, in accordance with the provisions of this Act; or

Citizen of country of International Copyright Union.

(c) When a foreign state or nation of which an author is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or

Reciprocal protection is granted.

(d) When a foreign author is a citizen or subject of any country which is a party to an international agreement which provides for reciprocity in the granting of copyright, when the United States shall have become a party thereto.

U. S. party to international agreement on copyright.

The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require.

President's proclamation.

SEC. 3. That the author of any compilation, abridgment, adaptation, arrangement, dramatization, translation, or other version of a work in the public domain, or of a copyright work when made with the consent of the owner of the copyright in such work, shall be the first owner of the copyright in such

Author of compilation, abridgment, adaptation, etc.

compilation, abridgment, adaptation, arrangement, dramatization, translation or other version, subject to the rights of the owner of the copyright in the original work.

Author employed for hire.

SEC. 4. That where any work subject matter of copyright under this Act has been made by an author entitled to copyright in the United States under the terms of a contract with any person or corporation and during the course of his employment for hire by any such person or corporation, such employer shall be the first owner of the copyright in such work, subject to the terms of the agreement between the author and his employer.

Owner of author's unpublished manuscript.

SEC. 5. That the owner of the manuscript of an author's work acquired under the author's will shall be presumed to be the owner of the copyright in such work provided the work has not been published nor performed or delivered in public.

Publisher of newspaper or periodical.

SEC. 6. That the publisher of a newspaper or other periodical shall be the first owner of the general copyright therein: *Provided, however,* That in the case of any literary or other contribution therein the author thereof shall be the owner of the copyright, and in the absence of agreement to the contrary he shall be deemed only to have licensed the publisher to print and publish the said contribution.

Maker of motion pictures, musical records, etc.

SEC. 7. That where any person, association, firm or corporation, after this Act goes into effect, shall manufacture a motion picture, or shall make and sell a phonographic record or a perforated roll or other contrivance which shall mechanically reproduce any literary, dramatic, musical or dramatico-musical work, such person, association, firm or corporation shall be the first owner of the copyright in such motion picture or in such phonographic record, perforated roll or other contrivance: *Provided, however,* That where such motion picture, or such phonographic record or perforated roll or other contrivance, is based in whole or in part upon a work in which copyright subsists, then, during the term of copyright in such work, the copyright in such motion picture shall include only the exclusive right to make, copy, vend and exhibit it, and the copyright in such phonographic record, roll or other contrivance shall include only the exclusive right to make, copy, and vend it: *And provided further,* That the copyright in such motion picture, or such phonographic record, roll or other contrivance, shall be held subject to all the rights of the owner of the copyright in any work upon which such motion picture, or such phonographic record, roll or other contrivance, is based.

Proviso: Protection of work used.

Author's reserved rights confirmed.

SEC. 8. That in the case of any copyright registered prior to the time when this Act goes into effect by a proprietor under a contract, express or implied, by which some of the rights included in the copyright were reserved to the author, the ownership of the said rights is hereby confirmed to the author, or his assigns, who shall be entitled to dispose of them or to bring an action in case of their infringement as fully as the author could do under this Act had copyright been originally obtained by him.

Works protected.

All writings of author protected.

SEC. 9. That the works for which copyright is secured under this Act shall include all the writings of authors whether unpublished or published, and the classes of works enumerated below are expressly recognized as subject matter of copyright; but the following specifications shall not be held to limit the subject matter of copyright nor shall any error in classification invalidate or impair the copyright protection secured under this Act:

(a) Books, including composite and cyclopaedic works, directories, gazetteers, and other compilations;

- (b) Periodicals, including newspapers;
- (c) Lectures, sermons, addresses (prepared for oral delivery);
- (d) Dramatic compositions and dramatico-musical compositions;
- (e) Musical compositions;
- (f) Maps;
- (g) Works of art (drawings, paintings and sculpture);
- (h) Reproductions of a work of art including engravings, lithographs, photo-engravings, photogravures, casts, plastic works, or copies by other recognized methods of reproduction;
- (i) Drawings and plastic works of a scientific or technical character;
- (j) Photographs;
- (k) Prints and pictorial illustrations, including prints or labels for articles of manufacture heretofore registrable in the Patent Office under the Act approved June 18, 1874;
- (l) Motion-picture photoplays;
- (m) Motion pictures other than photoplays;
- (n) Scenarios for motion pictures;
- (o) Works of architecture, models or designs for architectural works;
- (p) Choreographic works and pantomimes, the scenic arrangement or acting form of which is fixed in writing or otherwise;
- (q) Phonographic records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced.

Works of architecture.

Choreographic works and pantomimes.

Phonograph records.

SEC. 10. That compilations or abridgments, adaptations, arrangements, dramatizations, translations or other versions of works in the public domain, or of copyright works when used with the consent of the owner of the copyright in such works, as well as motion pictures and phonographic records, rolls or other contrivances made from such works, shall be regarded as new works subject to copyright under the provisions of this Act; but the making or publication of any such compilations, abridgments, adaptations, arrangements, dramatizations, translations, motion pictures, or phonographic records, rolls, or other contrivances shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

Compilations, abridgments, etc.

Such use not to affect original copyright.

SEC. 11. That no copyright shall subsist in the original text of any work which is in the public domain, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however,* That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright owner.

Works in the public domain.

Government publications.

Exclusive rights secured.

SEC. 12. That it is expressly recognized and declared that the copyright hereby granted secures to authors of works of literature, music, the drama and the fine arts, and to the administrators, executors or assigns of such authors, the exclusive right to produce, perform, or distribute their works by any means whatsoever, and, subject to the provisions of this Act, any person entitled thereto shall have the exclusive right:

Exclusive rights secured.

(a) To copy, print, reprint, publish, produce, reproduce or transmit the copyright work in any form; and to vend or otherwise dispose of such work and to authorize its public use in any manner or by any means whatsoever;

To copy, print and vend, etc.

- To translate. (b) To translate said work into other languages or dialects, or to make any other version thereof;
- To make a motion picture. (c) To reproduce said work in the form of a motion picture and to exhibit the same;
- To make records. (d) To make, copy and vend any phonographic record, or any perforated roll or other contrivance by means of which, in whole or in part, the copyright work may be mechanically reproduced;
- To dramatize. (e) To dramatize the copyright work if it be a non-dramatic work, and to convert it into a novel or other non-dramatic work if it be a drama;
- To convert a motion picture into a story or drama. (f) To convert a copyright motion picture photoplay which is not based upon a work in which copyright is subsisting, into a story or dramatic composition;
- To arrange music. (g) To arrange or adapt the copyright work if it be a musical work;
- To finish a work of art. (h) To complete, execute, and finish said work if it be a model or design for a work of art;
- To deliver in public. (i) To deliver or authorize the delivery of said work in public if it be a lecture, sermon, or address, prepared for oral delivery;
- To broadcast. (j) To communicate the copyright work to the public by means of radio broadcasting, telephoning, telegraphing, or any other method for transmitting sounds or pictures;
- To perform or represent. (k) To perform or represent said work publicly in whole or in part, if it be a dramatic or dramatico-musical work, and if such work is unpublished, to vend any manuscript or any record whatsoever thereof; to make or to procure the making, in whole or in part, of any transcription or record thereof or of any other contrivance by or from which it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;
- To control mechanical production of music. (l) To perform said work publicly if it be a musical composition; and for the purpose of public performance and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided, however,* That nothing in this Act shall be construed to prohibit the performance of copyright musical works by churches or public schools, provided the performance is given for charitable or educational or religious purposes, unless a fee is charged for admission to the place where the music is so used.

Copyright in composite works or periodicals.

SEC. 13. That the copyright provided by this Act shall protect in the case of composite works or periodicals all the copyrightable component parts of the work copyrighted, and all matters therein in which copyright is already subsisting: *Provided, however,* That the publisher of a newspaper or other periodical shall, in the absence of an agreement with the author to the contrary, secure only a license to print and publish in such newspaper or other periodical such author's literary or other contribution contained therein.

Copyright in work of architecture.

SEC. 14. That the copyright of a work of architecture shall cover only its artistic character and its design and shall not extend to processes or methods of construction nor shall it prevent the making or publishing of photographs, paintings or other illustrations thereof which are not in the nature of architectural drawings or plans, and the owner of the copyright shall not be entitled to obtain an injunction restraining the construction, substantially begun, of an infringing building, or an order for its demolition or seizure.

Assignment of copyright, etc.

SEC. 15. That copyright under this or previous Acts of the United States may be assigned, granted, or mortgaged, or may be bequeathed by will. In order to be valid such assignment, grant, or mortgage shall be in writing signed by the author or other owner of the copyright. Such owner of the copyright in any work may assign, grant, or mortgage the entire copyright, either generally or subject to limitations, for the entire period of the copyright or for a limited time, or for a specified territory; and he may so assign, grant, or mortgage any separate right or rights recited in section 12 of this Act, and may grant any interest in any such right or in the entire copyright by license; but any separate right or use not collectively or specifically assigned shall remain the property of the author of the work or other owner of the copyright therein. The author or his assigns may prevent infringement of, or interference with, any or all of their respective rights by legal means and may obtain damages as provided by this Act for any act or acts in violation of any such rights: *Provided, however,* That any such assignment, grant, license or mortgage shall specify and clearly describe the rights granted under this Act or previous Acts of the United States which are so assigned, granted, mortgaged or licensed.

Assignment, grant, or mortgage of copyright.

License of any copyright interest.

SEC. 16. That every assignment of copyright and every copyright license executed in a foreign country shall be acknowledged by the assignor or licensor before a secretary in the diplomatic service or consular officer of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such secretary or consular officer shall be *prima facie* evidence of the execution of the instrument.

Foreign assignment to be acknowledged before a consular officer.

SEC. 17. That assignments, grants, mortgages, or licenses of copyright, or of separate rights thereunder, may be recorded in the Copyright Office, and no action shall be maintained for the infringement of the copyright in any work, or of any separate right thereunder, by an assignee of the copyright or of such right, until the instrument under which he claims shall have been recorded.

Assignments, etc., may be recorded.

Cannot sue until assignment, etc., is recorded.

SEC. 18. That the recording provided for in the preceding section may take place at any time, but if any assignee, grantee, mortgagee, or licensee shall fail to record his assignment, grant, mortgage, or license within three calendar months after its execution in the United States, or within six calendar months after its execution without the limits of the United States, such assignment, grant, mortgage, or license shall be void as against a subsequent purchaser for a valuable consideration, without notice, whose assignment has been duly recorded.

Recording to take place within 3 to 6 months.

SEC. 19. That the copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object unless expressly stipulated; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyright work the possession of which has been lawfully obtained.

Copyright is distinct from material object.

Term of copyright protection.

SEC. 20. That the copyright secured by this Act, except as otherwise expressly provided, shall endure for the life of the author of the work and for a period of fifty years after his death. In the case of a work by joint authors, the copyright shall terminate at the expiration of fifty years from the date

Term of copyright.

of the death of the author who dies first, unless a joint author is living at the end of said fifty years, in which event the copyright shall terminate upon the death of the last surviving joint author.

Posthumous work, or work by an employe for hire, etc.

SEC. 21. That in the case of any posthumous work, or of any work the copyright of which is first owned by an employer for hire; or any composite or cyclopaedic work; or any compilation, abridgment, adaptation, or arrangement, the copyright shall endure for a period of fifty years from the date of the first publication of the work.

Newspaper or periodical.

SEC. 22. That the general copyright secured under this Act by the publisher of a newspaper or other periodical shall endure for a period of fifty years from first publication: *Provided, however,* That unless there is a specific agreement to the contrary, the right of periodical publication in any literary or other contribution published in such newspaper or periodical under the provisions of section 13 of this Act, shall, after such publication, revert to the author thereof, and shall continue during his life and for fifty years after his death.

Motion pictures, records or perforated rolls.

SEC. 23. That copyright shall subsist in motion pictures, and in phonographic records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, for a period of fifty years from the date when such motion picture is first sold or exhibited, or such phonographic record, roll, or other contrivance is first sold, offered for sale, or otherwise publicly distributed.

Extension of term for subsisting copyright.

SEC. 24. That the copyright subsisting in any work when this Act goes into effect shall be continued at the end of the subsisting term until the expiration of fifty years beyond the author's death and such continuation of the copyright shall vest in the author if still living, or if the author be not living, in the widow, widower or children of the author, or if such author, widow, widower or children be not living, then if the author left a will the copyright shall vest in the author's executors or in a duly appointed administrator with the will annexed, and in the absence of a will the copyright shall vest in the author's next of kin: *Provided,* That in the case of a posthumous work or of a periodical or other composite or cyclopaedic work, or a work copyrighted by an employer for whom such work was made for hire, or by a corporate body (otherwise than as assignee or licensee of the individual author), the proprietor of the subsisting copyright in any such work shall have a continuing copyright in such work which shall terminate fifty years from the date of first publication.

Extension of term for posthumous, composite or cyclopaedic work.

Term for works by foreign authors.

SEC. 25. That in the case of works by foreign authors who are citizens or subjects of any country within the International Copyright Union made or first published after the date of the President's proclamation of adhesion to the said Union, the copyright protection in the United States shall begin upon such date of making or first publication; and in the case of all of their works, not previously copyrighted in the United States, in which copyright is subsisting in any country of the Copyright Union at the date of said proclamation, copyright protection in the United States shall begin upon such date; but the duration and termination of the copyright protection in the United States for all works shall be governed by the provisions of this Act: *Provided, however,* That the duration of copyright in the United States shall not in the case of any foreign work extend beyond the date at which such work has fallen into the public domain in the country of origin.

Not to extend beyond protection abroad.

Infringement of copyright and remedies.

Sec. 26. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

Infringement of copyright.

(a) To an injunction restraining such infringement;

Injunction and damages.

(b) To pay such damages to the owner of the right infringed as he may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement; and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims;

(c) To pay, at the option of the owner of the right infringed, in lieu of actual damages and profits, such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts hereinafter stated; but except as otherwise expressly provided in this Act, such damages shall in no case exceed the sum of \$5,000 nor be less than \$250, and shall not be regarded as a penalty:

Damages assessed by court.

First. In the case of a painting, statue, or sculpture, \$10 for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Measure of damages: Works of art.

Second. In the case of any work enumerated in section 9 of this Act, except a painting, statue, or sculpture, \$1 for every infringing copy made or sold or found in the possession of the infringer or his agents or employees;

Other works.

Third. In the case of a lecture, sermon, or address, \$50 for every infringing delivery;

Lecture or address.

Fourth. In the case of a choreographic work or pantomime, or a dramatic or dramatico-musical, or a choral or orchestral composition, or a motion picture, \$100 for the first and \$50 for every subsequent infringing performance or exhibition;

Dramatico - musical work, motion picture, etc.

Fifth. In the case of other musical compositions, \$10 for every infringing performance;

Musical composition.

(d) In case of an unauthorized newspaper reproduction of a copyrighted photograph such damages assessed, in lieu of actual damages and profits, shall not exceed the sum of \$200 nor be less than the sum of \$50;

Newspaper reproduction of photograph.

(e) In case of the infringement of an undramatized or non-dramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such statutory damages shall not exceed the sum of \$100;

Infringement by motion picture of non-dramatic work.

(f) In case of the infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyright work and that such infringement could not reasonably have been foreseen, the entire sum of such statutory damages recoverable by the owner of the rights infringed from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of \$5,000 nor be less than \$250.

Infringement by motion picture of dramatic work.

Special damages.

Sec. 27. That the person guilty of infringement shall further be liable:

(a) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright or any subsidiary right;

Delivery of infringing articles.

(b) To deliver up on oath for destruction, as the court may order, all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies.

Plates or molds, etc.

Sec. 28. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the district courts

Jurisdiction.

of the United States, the district court of any Territory, the Supreme Court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands, and any court given jurisdiction under this section may proceed in any action, suit, or proceeding instituted for violation of any provision of said laws to enter a judgment or decree enforcing the remedies provided by this Act.

Court may grant injunctions.

SEC. 29. That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any such injunction may be served on the parties against whom it may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any court or judge possessing jurisdiction of the defendants.

Certified copies.

SEC. 30. That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

Proceedings may be united in one action.

SEC. 31. That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action.

Attorney's fees.

SEC. 32. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

District of the defendant.

SEC. 33. That civil actions, suits or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

Suit in name of assignee.

SEC. 34. That any civil action, suit or proceeding involving the infringement of any exclusive right recited in section 12 of this Act which has been assigned, granted, or mortgaged to another may be instituted and prosecuted by and in the name of the assignee, grantee, or mortgagee of such exclusive right in the same manner and as fully as the first copyright owner could have done had no assignment, grant, or mortgage been made: *Provided*, That before any such action, suit or proceeding is begun, such assignment, grant, or mortgage shall have been recorded in the Copyright Office at Washington.

Assignment must be recorded.

Copyright is presumed to subsist.

SEC. 35. That in any action for infringement of copyright in a work for which no registration has been made, copyright in such work shall nevertheless be presumed to subsist, and if the author's name is indicated thereon, it shall be presumed that the person so named is the author of the work until the contrary is proved. If the work is anonymous or pseudonymous, the publisher whose name appears on the work shall be entitled to protect the rights of the author.

Infringement of article in newspaper.

SEC. 36. That the publisher of a copyright newspaper or other periodical shall, as the first owner of the general copyright in such work, have the right to sue for infringement of the copyright, including infringement of any copyrightable component part thereof except where, under the provisions of section 13 hereof, such publisher and owner has acquired from the author only a license to print and publish his literary or other contribution.

SEC. 37. That the orders, judgments, or decrees of any court mentioned in section 28 of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts respectively.

Appeal: Writ of error.

SEC. 38. That nothing in this Act shall be construed to annul or limit the right of the author or the copyright owner of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor; nor to deprive the owner of the copyright in any work or the owner of any rights infringed of any remedy in law or equity external to the provisions of this Act.

Common law protection.

SEC. 39. That any person who wilfully and for profit shall infringe the copyright in any work protected under the copyright laws of the United States, or who shall knowingly and wilfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by fine of not less than \$100 nor more than \$1,000, or both, in the discretion of the court: *Provided*, That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

Wilful infringement.

No suit after 3 years.

SEC. 40. That the Supreme Court of the United States shall prescribe such rules and regulations as may be necessary for practice and procedure in any action, suit, or proceeding instituted for infringement under the provisions of this Act.

Supreme Court to make rules for procedure.

Prohibition of importation.

SEC. 41. That the copyright in any work shall be deemed to be infringed by any person who knowingly imports for sale or hire or otherwise distributes in the United States copies of any piratical reprint of a work in which copyright subsists in the United States, and the importation into the United States of piratical copies of any work copyrighted in the United States, shall be and is hereby prohibited; and such prohibition of importation shall extend also to any authorized foreign reprint of an American author's work or of a work by an alien author domiciled or resident in the United States, whenever an agreement authorizing such reprint shall stipulate that copies of such reprint shall not be brought into the United States: *Provided*, That such agreement shall have been recorded in the Copyright Office at Washington, and that the owner of the United States copyright shall have notified in writing the Secretary of the Treasury and the Postmaster-General that the importation of copies of such work is in contravention of such agreement: *And provided further*, That, except as regards piratical copies, such prohibition of importation shall not apply to any foreign newspaper or magazine although containing matter copyrighted in the United States when such matter is printed or reprinted by authority of the owner of the United States copyright, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization.

Piratical reprints.

Prohibition of importation.

Notification to Treasurer and Postmaster.

SEC. 42. That any and all copies of works prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright works

Copies may be seized.

imported in the mails or otherwise in violation of the provisions of this Act may be re-exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve wilful negligence or fraud.

Rules for procedure:
Importation.

SEC. 43. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post-Office Department, as the case may be, by copyright owners or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, which infringe the rights of such copyright owners or injured parties.

No notice of copy-
right required.

SEC. 44. That no notice of copyright shall be required on any work subject to copyright under this Act and the omission of such notice from any work shall not be taken as evidence that no copyright is claimed therein; but if desired a notice of the reservation of the copyright or of any right included in the copyright in any work may be placed on any or all copies of such work by the owner of the copyright or the assignee or licensee of any special right pertaining to the copyright in the work; but any person who, with fraudulent intent, shall insert or impress any notice of copyright or words of the same purport in or upon any article in which copyright for the United States does not subsist, shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$1,000, and any person who shall knowingly issue or sell any article bearing such notice or words of the same purport when copyright in such article does not subsist in the United States shall be liable to a fine of \$100.

False notice.

Selling works with
false notice.

Deposit of copies and registration of copyright.

Registration of copy-
right work.

SEC. 45. That the author of any work made the subject of copyright by this Act, or the owner of the copyright in such work, may if he so desires obtain registration of a claim to copyright in such work upon the deposit in the Copyright Office at Washington of a suitable application which shall be accompanied by the registration fee provided by this Act and one copy of the work in which copyright is claimed, or the identifying matter as below provided.

Deposit of copy of
work.

SEC. 46. That the copy deposited for registration may either be printed, typewritten, or be in legible handwriting if the work is a book, a dramatic, musical, or dramatico-musical composition; the scenario of a motion picture; a lecture, sermon or address, or a choreographic work or a pantomime. For a photograph, there shall be deposited one print from the negative; for any work of the fine arts (drawing, painting, or sculpture) or for a model for a work of art, or a drawing or plastic work of a scientific or technical character, a photograph or other identifying reproduction; for a motion-picture, the title, description and synopsis of it, with as many prints from each reel as will identify it; for an architectural work, a photographic or other identifying representation of such work and such drawings as are necessary to identify it: *Provided*, That in the case of a motion picture such deposit and registration shall only be made for a completed work: *And provided further*, That the deposit of records, rolls, or other contrivances by means of which sounds may be mechanically reproduced, shall not be required; but the application for registration of a claim of copyright in any such record, roll, or other contrivance shall describe the music which has been actually recorded and shall clearly differentiate and identify the particular rendition and its performer, and shall state the date when such record, roll, or other contrivance was first sold, offered for sale or otherwise publicly distributed.

No deposit of records
or rolls, etc.

SEC. 47. That the Register of Copyrights upon receipt of such application and such required copy or identifying matter shall make suitable record of the copyright claim and shall then return the copy or identifying matter received to the person indicated in the application, with a certificate attached, under seal of the Copyright Office.

Registration to be made and copies returned.

SEC. 48. That in the case of any work in which copyright is claimed, whether published or unpublished, a copy of which by reason of its character, bulk, or fragility, or because of dangerous ingredients, cannot expediently be filed, the Register of Copyrights may determine that there shall be deposited with the application for registration, in lieu of a copy of such work, such identifying photographs or prints, together with such written, typewritten, or printed description of the work as he shall find sufficient to identify it.

Dangerous or bulky articles.

SEC. 49. That whenever any literary, dramatic, musical or artistic work has been *published*, it shall be obligatory except as below provided to make a deposit in the Copyright Office promptly after the date of publication of two complete copies of the best edition thereof then published; not as a condition for securing copyright but for the use of the Library of Congress. Registration for such work may be secured if such copies are accompanied by a suitable application: *Provided, however*, That no copies of a complete motion-picture film shall be required to be deposited: *And provided further*, That the deposit of copies required by this Act shall not be obligatory in case of any work whose author is a citizen or subject of a foreign country which is a member of the International Copyright Union or any work which is protected by copyright in the United States under this Act by reason of first publication in any country which is a member of the said Union, unless and until such work, if it be a book, shall have been republished in the United States under an assignment of the copyright for the United States, or under a license to print and sell such book in the United States.

Deposit of *published* work for Library of Congress.

No deposit required of books by foreign authors.

SEC. 50. That of newspapers or other periodicals in which copyright is claimed, one copy of each issue shall be deposited promptly after the date of publication, and may be registered upon receipt of a suitable application and the registration fee, and such deposit and registration shall suffice for all of the copyrightable component parts of the periodical and shall be held sufficient in the case of actions or proceedings for the infringement of the copyright of any of the copyrightable contents of the said periodical, as provided in section 36 of this Act.

Newspapers or periodicals.

SEC. 51. That should the copies of the *published* work called for by section 49 of this Act not be promptly deposited as herein provided, the Librarian of Congress may at any time after the date of the publication of the work, upon actual notice, require the owner of the copyright to deposit it, and after the said demand shall have been made, in default of the deposit of copies of the work in the Library of Congress within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, the owner of the copyright shall be liable to a fine of \$100 and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work.

Failure to deposit work.

Demand by the Librarian of Congress for copies.

SEC. 52. That the postmaster to whom are delivered the articles deposited as provided in this Act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant.

Receipt for copies from Postmaster.

Date of publication. SEC. 53. That in the interpretation and construction of this Act "the date of publication" shall in the case of a work of which copies are reproduced for sale or public distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the owner of the copyright or under his authority; and the performance of a dramatic, musical, or dramatico-musical work, the delivery of a lecture, sermon, or address, the exhibition of a motion picture, or of a work of art, and the construction of an architectural work or the issue of photographs or other reproductions of such work, shall not be held to be publication.

Certificate for each entry. SEC. 54. That in the case of each work registered for copyright the person recorded as the owner of the copyright shall be entitled to a certificate of registration under the seal of the Copyright Office, to contain the name and address of said owner, the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled or residing in the United States at the time of the making or first publication or first public performance of his work, then a statement of that fact, including his place of domicile or residence; the title of the work which is registered for which copyright is claimed; the name of the author (when the records of the Copyright Office shall show the same); the date of the deposit of the copy or copies of such work; the date of publication or performance if the work has been reproduced in copies for sale or publicly distributed or performed, and such marks as to class designation and entry number as shall fully identify the entry. The Register of Copyrights shall prepare a printed form for the said certificate, to be filled out as above provided for in the case of all registrations made after this Act goes into effect, which certificate, sealed with the seal of the Copyright Office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and a similar certificate shall be supplied on request in the case of all previous registrations so far as the Copyright Office record books shall show such facts. In addition to such certificate the Register of Copyrights shall furnish, upon request, without additional fee, a receipt for the copy or copies of any work deposited under this or previous Acts of the United States. Said certificate and receipt shall be admitted in any court as prima facie evidence of the facts stated therein.

Index to copyright entries. SEC. 55. That the Register of Copyrights shall fully index all copyright registrations and all assignments, grants, licenses or mortgages recorded, and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration. Both the current catalogues and the complete and indexed catalogues for each class of copyright entries shall be furnished to all persons desiring them at reasonable prices.

Records open to public inspection. SEC. 56. That the record books of the Copyright Office, together with the indexes to such record books, and all works deposited and retained in the Copyright Office, shall be open to public inspection, and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the Register of Copyrights and approved by the Librarian of Congress.

Disposal of articles deposited. SEC. 57. That of the articles deposited in the Copyright Office under the provisions of the previous copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles

shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

SEC. 58. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the Register of Copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the Copyright Office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from January to November, inclusive, a statement of the year of receipt of such articles and a notice to permit any author, copyright owner, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work deposited prior to the date upon which this Act went into effect shall be destroyed during its term of copyright without specific notice to the copyright owner of record, permitting him to claim and remove it.

Advertisement of deposit.

Copyright Office.

SEC. 59. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the Copyright Office, Library of Congress, Washington, District of Columbia, and shall be under the control of the Register of Copyrights, who shall, under the supervision and approval of the Librarian of Congress, perform all the duties relating to the registration of copyrights and shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act and to prescribe the form of application for such registration.

Records and deposits.

Register to make rule.

SEC. 60. That there shall be appointed by the Librarian of Congress a Register of Copyrights, at a salary of thousand dollars per annum, and one Assistant Register of Copyrights, at a salary of thousand dollars per annum who shall have authority during the absence of the Register of Copyrights to attach the Copyright Office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the Register as may from time to time be authorized by law.

Register of Copyrights and Assistant Register.

SEC. 61. That the Register of Copyrights shall make daily deposits with the Treasurer of the United States of all moneys received to be applied as copyright fees, and shall make weekly transfers to the Treasurer of the United States in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters; and he shall make monthly reports to the Comptroller General of the United States and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

Deposit of copyright fees.

Report to Comptroller General.

Register's bond.

SEC. 62. That the Register of Copyrights shall give bond to the United States in the sum of \$20,000, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

Annual report of Register.

SEC. 63. That the Register of Copyrights shall make an annual report to the Librarian of Congress of all copyright business for the previous fiscal year, which report shall be printed promptly after the close of the fiscal year and also be printed in the annual report on the Library of Congress.

Register to make entry.

SEC. 64. That the Register of Copyrights shall provide and keep such record books in the Copyright Office as are required to carry out the provisions of this Act, and whenever application has been made to the Copyright Office for registration of copyright in compliance with the provisions of this Act he shall make such registration.

Assignments, etc., to be recorded.

SEC. 65. That the Register of Copyrights shall, upon payment of the prescribed fee, record any assignment of copyright, or any grant, license, or mortgage of any right pertaining to the copyright in any work protected under this Act or any previous Acts of the United States, and shall return it after recordation to the sender with a certificate of record attached under seal of the Copyright Office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under said seal.

Copyright fees—General.

SEC. 66. That the Register of Copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright under the provisions of this Act, \$1, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be 50 cents where a certificate is not demanded, and only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time. For every additional certificate of registration made, 50 cents. For recording and certifying any instrument of writing for the assignment, grant, or mortgage of copyright, or any such license specified in section 15 of this Act, or for any copy of such assignment, grant, mortgage, or license, duly certified, if not over three hundred words in length, \$1; if more than three hundred and less than one thousand words in length, \$2; if more than one thousand words in length, \$1 additional for each additional one thousand words or fraction thereof over three hundred words. For comparing any copy of an assignment with the record of such document in the Copyright Office and certifying the same under seal, \$1. For indexing the transfer of the ownership of copyrighted articles, 10 cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of Copyright Office records, indexes, or deposits, 50 cents for each full hour of time consumed in making such search.

For recording assignments, etc.

For indexing transfer of copyright.

Copyright Office seal.

SEC. 67. That a seal shall be provided and be used in the Copyright Office and be the seal thereof, and by it all papers issued from the Copyright Office requiring authentication shall be authenticated.

Entry into the International Copyright Union.

Entry of the United States into the International Copyright Union.

SEC. 68. That the President of the United States be, and is hereby, authorized to effect and proclaim the adhesion of the United States to the convention creating an international union for the protection of literary and artistic works, known also as the International Copyright Union, signed at Berne, Switzerland, September 9, 1886, and revised at Berlin, Germany, November 13, 1908, and to the "Additional protocol" to the said convention executed at Berne, Switzerland, March 20, 1914.

SEC. 69. That it is hereby declared that the United States desires to be placed in the first class of the countries which are members of the International Copyright Union, as provided in article 23 of the said convention of 1908.

As country of first class.

SEC. 70. That on and after the date of the President's proclamation, as provided in sec. 68 of this Act, foreign authors not domiciled in the United States who are citizens or subjects of any country (other than the United States) which is a member of the said International Copyright Union, or authors whose works are first published in and enjoy copyright protection in any country which is a member of the said Union, shall have within the United States the same rights and remedies in regard to their works which citizens of the United States possess under this Act and for the period of copyright prescribed by this Act: *Provided, however,* That no right or remedy given pursuant to this Act shall prejudice lawful acts done or rights in copies lawfully made or the continuance of enterprises lawfully undertaken within the United States prior to the date of said proclamation, and such foreign author shall not be entitled to restrain any person who has, prior to such date, taken any action in connection with the reproduction or performance (in a manner which at the time was not unlawful) of any work by such foreign author whereby he has incurred any substantial expenditure or liability, unless such foreign author agrees to pay to him such compensation as, failing agreement, may be determined by arbitration.

Foreign authors in Union to be protected.

Acts lawfully done prior to entry.

SEC. 71. That in the case of works by such foreign authors made or first published after the date of the said proclamation the copyright protection in the United States shall begin upon such date of making or first publication; and in the case of all their works, not previously copyrighted in the United States, in which copyright is subsisting in any country of the Copyright Union at the date of the said proclamation, the copyright protection in the United States shall begin upon such date; but the duration and termination of the copyright protection in the United States for all works shall be governed by the provisions of this Act: *Provided, however,* That the duration of copyright in the United States shall not in the case of any foreign work extend beyond the date at which such work has fallen into the public domain in the country of origin.

Protection for foreign works.

Work fallen into the public domain.

SEC. 72. That the enjoyment and the exercise by such foreign authors of the rights and remedies accorded by the provisions of this Act shall not be subject to the performance of any formalities: *Provided, however,* That notwithstanding anything in this Act a citizen or subject of any country within the International Copyright Union, who is the owner of a copyright for any work in one of the countries of the said Union, may if he so desires register his claim of copyright in such work for the United States by depositing a copy of the work in the Copyright Office at Washington together with the prescribed application for registration.

No formalities required.

But a foreign owner may register his copyright.

SEC. 73. That the Act entitled "An Act to amend the law relating to patents, trade-marks, and copyrights", approved June 18, 1874, is hereby repealed, as well as all other laws or parts of laws in conflict with the provisions of this Act, but nothing in this Act shall affect causes for infringement of copyright heretofore committed, now pending in courts of the United States or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Repeal clause.

SEC. 74. That this Act shall go into effect on the first day of July, 1925.

Date of enforcement.

DECEMBER 1, 1924.

T. S.

Draft for A Bill to enable the United States

to enter the International Copyright Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That copyright throughout the United States and its dependencies shall subsist in the work of alien authors, not domiciled in the United States, by virtue of the adherence of the United States to the Convention of Berne for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Rome on June 2, 1928.

Sec. 2. From and after the date upon which the adherence of the United States to the said Convention of 1928 becomes effective, copyright protection shall be accorded without compliance with any conditions or formalities whatever for all works by such alien authors who are nationals of any country which is a member of the International Copyright Union; as well as for any work which may be or has been first published in a country which is a member of the said Union: Provided, That as to copyright in works not previously copyrighted in the United States, no right or remedy given pursuant to this Act shall prejudice lawful acts done or rights in or in connection with copies lawfully made or the continuance of business undertakings or enterprises lawfully undertaken within the United States or any of its dependencies prior to the date on which the adherence of the United States to the said Convention of 1928 goes into force; and the author or other owner of such copyright or person claiming under him shall not be entitled to bring action against any person who has prior to such date taken any action in connection with the exploitation, production, reproduction, circulation, or performance (in a manner which at the time was not unlawful) of any such work whereby he has incurred any substantial expenditure or liability.

Sec. 3. Copyright is hereby granted and secured by this Act to all authors entitled thereto from and after the creation of their work, whether published or unpublished, including works of architecture and choreographic works and pantomimes, and the duration and termination of such copyright shall be governed by the provisions of Sections 23 and 24 of the Act of March 4, 1909 (U.S.C., Title 17); Provided, That the duration of copyright in the United States shall not in the case of the work of any alien author extend beyond the date upon which such work has fallen into the public domain in the country of its origin as defined in said Convention of 1928.

Sec. 4. The rights granted in Section 1 of the said Act of 1909, (U.S.C., Title 17) shall include the exclusive right of the author to communicate his work for profit to the public by any system of broadcasting; and the author of any copyrighted work, even after the assignment of the copyright in such work, shall at all times have the right to claim the authorship of his work, and the right to oppose every distortion, mutilation, or other modification of the said work which might be prejudicial to his honor or to his reputation, as well as the right to restrain the publication and/or the performance of the mutilated work.

Sec. 5. The Supreme Court of the United States shall prescribe such additional or modified rules and regulations as may be necessary for practice and procedure in any action, suit, or proceeding instituted for infringement under the provisions of this Act.

Sec. 6. This Act shall take effect from the date of its passage.

My draft of 1924 (Number three) without change, became bill H. R. 11258, (68th Cong., 2d Sess.). I explained it to the House Committee on Patents on Jan. 22, 1925 as follows:

One of the weightiest proposals of this bill is to effect the entry of the United States into the International Copyright Union, and I will therefore refer to that matter first.

The beginnings of copyright legislation in the United States date back to January, 1783, when the State of Connecticut passed the first copyright act. It was followed by similar enactments by all of the original States, except one (Delaware) up to 1786, and led up to the first Federal statute of 1790. During the next 100 years there were 18 amendatory copyright acts of one sort or another, including two acts of general revision and consolidation. In 1891 came the first great step forward in copyright advancement in the United States—the extension of copyright protection to the works of foreign authors—secured by the enactment of the so-called international copyright law, the “Chace Act” of March 3 of that year. Then followed a number of amendatory acts culminating in the general revision and consolidation by the act of March 4, 1909, our present copyright law, already amended by four subsequent enactments up to date.

Under the authority of the provisions of the acts of March 3, 1891, and March 4, 1909, reciprocal copyright relations have been established between the United States and 34 foreign countries. No question has been raised as to the great practical advantages secured to American authors by reason of these reciprocal relations. The authors of these 34 foreign countries are given access to the rights and privileges of our copyright laws upon proper compliance with their requirements and, reciprocally, American authors upon proper care to do what is required by the laws of each of these 34 countries may secure the protection they accord. But it is not a perfect and up-to-date exchange.

American authors are not automatically protected in foreign countries. The protection must be secured by exact compliance with foreign requirements, and there is abundant evidence that valuable literary property rights have been jeopardized or lost by reason of failure in this regard. On the other hand, foreign authors fail to secure the protection intended to be accorded them by similar failure to comply with some technical requirement of our laws. In Europe copyright has advanced beyond this rather primitive situation. Copyright protection is absolute and automatic in behalf of every author of every country within the International Copyright Union in all the countries of the union, and is independent of compliance with any conditions or formalities which may be required by the domestic legislation of any country concerned. This has been brought about by the adhesion of each country to the international convention upon which the Copyright Union was founded which was put into effect in 1887. Now, 37 years later, the time has arrived when there is a general consensus of opinion that we should join this union and secure for our authors the benefit of automatic and absolute copyright protection in the 28 countries now within the union. This is the second great advance in copyright which the United States may attempt.

With a view to accomplish this important forward movement no less than six different bills are already in the hands of your committee, viz: Sixty-seventh Congress, H. R. 11476, 13676, and 14035; Sixty-eighth Congress, H. R. 573, 2663, and 2704. All these bills were drafted with the single end—to secure this one essential advance—entry into the Copyright Union—with a minimum amendment of existing law.

No conclusive action by your committee has been secured on any of these bills. Meantime the desirability has been urged and the need generally admitted for specific amendment of the existing copyright law in several important particulars and a bill was submitted—the Dallinger bill, H. R. 9137—proposing a general amendment of the copyright laws including a proposal for the entry of the United States into the International Copyright Union. While preliminary public hearings—in April and May last—enabled the proponents of that bill to put on record a statement and explanation of its provisions no conclusion was reached and no bill was reported by your committee.

Meantime, at the request of the Authors' League of America, the bill H. R. 11258 has been drafted, and was presented by Mr. Perkins on January 5 and referred to your committee. The primary and fundamental purpose of this last bill also is to secure the entrance of the United States into the International Copyright Union by authorizing the President to effect and proclaim the adhesion of the United States to the convention creating the union.

To make these proposals effective and secure entry by the United States into the Copyright Union the bill proposes such amendments of the existing copyright laws as will permit adherence to the articles of convention upon which the union is founded. It is a fundamental article of convention that copyright protection shall not be conditioned upon compliance with any formalities. The most serious bar to entry by the United States into the union is the requirement of American manufacture for books, lithographs, and photoengravings contained in our copyright act of March 3, 1891, and reenacted on March 4, 1909. This requirement is therefore eliminated by the bill, as well as the required affidavit that the manufacture in the United States has taken place.

The bill further provides that foreign authors shall have within the United States "the same rights and remedies in regard to their works which citizens of the United States possess under this act and for the period of copyright protection prescribed by this act"; but it safeguards American citizens who may have used the works of foreign authors prior to the date of entry into the Copyright Union by a proviso to the effect—

That no right or remedy given pursuant to this act shall prejudice lawful acts done or rights in copies lawfully made or the continuance of enterprises lawfully undertaken within the United States prior to the date of said proclamation, and such foreign author shall not be entitled to restrain any person who has, prior to such date, taken any action in connection with the reproduction or performance (in a manner which at the time was not unlawful) of any work by such foreign author whereby he has incurred any substantial expenditure or liability, unless such foreign author agrees to pay him such compensation as, failing agreement, may be determined by arbitration.

The term of copyright protection provided by the international copyright convention of 1908 is the life of the author and 50 years after his death, and this convention term is proposed in the bill in lieu of the present period of copyright protection, a first term of 28 years with renewal of the copyright for a second term of like length or 56 years in all. In extending this term of protection in the United States to the works of foreign authors it is expressly provided, "that the duration and termination of the copyright protection in the United States for all works shall be governed by the provisions of this act," and—

That the duration of copyright in the United States shall not in the case of any foreign work extend beyond the date at which such work has fallen into the public domain in the country of origin. //

In the case of posthumous works, works produced by an employee for hire, periodicals, composite or cyclopaedic works, and motion pictures, phonographic records, and such subsidiary works as compilations, abridgments, adaptations, and arrangements of music, the term of protection proposed is 50 years from date of publication.

The articles of convention require also that protection shall be accorded to works of architecture, and to choreographic works and pantomimes and these works have been added to the list of works protected by our present laws, and there have been added also "phonographic records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced," and "scenarios for motion pictures."

In the case of such other formalities as are now required under our copyright laws, namely, deposit of copies, registration of claim of copyright, and the insertion of notice of copyright, these requirements are no longer made compulsory but optional, and foreign authors are expressly released from compliance, with the proviso, however—

That notwithstanding anything in this act a citizen or subject of any country within the International Copyright Union, who is the owner of a copyright for any work in one of the countries of said union, may, if he so desires, register his claim of copyright in such work for the United States by depositing a copy of the work in the Copyright Office at Washington, together with the prescribed application for registration.

In the case of published works, while the deposit of copies in the Library of Congress is required as now, "not as a condition for securing copyright but for the use of the Library of Congress," a proviso specifically provides:

That the deposit of copies required by this act shall not be obligatory in case of any work whose author is a citizen or subject of a foreign country which is a member of the International Copyright Union or any work which is protected by copyright in the United States under this act by reason of first publication in any country which is a member of said union, unless and until such work, if it be a book, shall have been republished in the United States under an assignment of the copyright for the United States, or under a license to print and sell such book in the United States. //

The insertion of the notice of copyright under our present law is a condition precedent to obtaining copyright for the published work which must be given to the public with the prescribed notice attached. The bill provides:

That no notice of copyright shall be required on any work subject to copyright under this act and the omission of such notice from any work shall not be taken as evidence that no copyright is claimed therein.

But it is further provided that—

If desired a notice of the reservation of the copyright or of any right included in the copyright in any work may be placed on any or all copies of such work by the owner of the copyright or the assignee or licensee of any special right pertaining to the copyright in the work.

And to prevent unauthorized use of the copyright notice it is further provided:

But any person who, with fraudulent intent, shall insert or impress any notice of copyright or words of the same purport in or upon any article in which copyright for the United States does not subsist shall be guilty of a misdemeanor, punishable by a fine of not less than \$100 nor more than \$1,000, and any person who shall knowingly issue or sell any article bearing such notice or words of the same purport when copyright in such article does not subsist in the United States shall be liable to a fine of \$100.

As already explained, I have first of all dealt with the provisions which the bill contains relative to adhesion to the international copyright convention and our entry into this union, but I may now briefly outline such further provisions of the bill as are different from the provisions of existing copyright legislation.

The fundamental existing copyright law of the United States, the act of March 4, 1909, is a compromise measure drafted after long continued discussion and with the inclusion of provisions not required in support of the principles of copyright but at the time thought necessary to secure enactment, such as the requirement of American manufacture, the compulsory license provisions in relation to the use of music for mechanical reproduction, and the payment of a royalty fixed by law for music so used without regard to the quality or character of the music which may have been reproduced.

All these provisions are restrictions on the fundamental rights and privileges of the author and composer which should come away, and in the present bill it is proposed to eliminate them.

Copyright legislation is primarily enacted for the protection of the authors of such works as come within the scope of the copyright laws, and inasmuch as the first and fundamental endeavor has been to secure complete and adequate protection for the creators of literary, musical, dramatic, and artistic works, this bill may properly be designated an authors' bill. It distinctly affirms that copyright is secured for all the writings of authors from the time of the making of their works and that the copyright shall vest in the author of the work immediately upon its making and shall not depend upon the accomplishment of any conditions or formalities whatever. It is further expressly recognized and declared that the copyright granted secures to authors and to the administrators, executors, or assigns of such authors "the exclusive right to produce, perform, or distribute their works by any means whatsoever," and that it includes the following exclusive rights:

(a) To copy, print, reprint, publish, produce, reproduce, or transmit the copyright work in any form; and to vend or otherwise dispose of such work and to authorize its public use in any manner or by any means whatsoever;

(b) To translate said work into other languages or dialects, or to make any other version thereof;

(c) To dramatize the copyright work if it be a nondramatic work, and to convert it into a novel or other nondramatic work if it be a drama;

(d) To arrange or adapt the copyright work if it be a musical work;

(e) To complete, execute, and finish said work if it be a model or design for a work of art;

(i) To deliver or authorize the delivery of said work in public if it be a lecture, sermon, or address, prepared for oral delivery;

(k) To perform or represent said work publicly in whole or in part if it be a dramatic or dramatico-musical work, and if such work is unpublished to vend any manuscript or any record whatsoever thereof; to make or to procure the making, in whole or in part, of any transcription or record thereof or of any other contrivance by or from which it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(l) To perform said work publicly if it be a musical composition; and for the purpose of public performance and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided however*, That nothing in this act shall be construed to prohibit the performance of copyright musical works by churches or public schools, provided the performance is given for charitable or educational or religious purposes, unless a fee is charged for admission to the place where the music is so used.

It will be noted that so far as most of these lettered paragraphs are concerned, their provisions are not essentially different from the rights granted under our present copyright laws, but the following are new either in substance or in express statement:

(c) To reproduce said work in the form of a motion picture and to exhibit the same;

(d) To make, copy, and vend any phonographic record, or any perforated roll or other contrivance by means of which, in whole or in part, the copyright work may be mechanically reproduced.

(f) To convert a copyright motion-picture photoplay which is not based upon a work in which copyright is subsisting, into a story or dramatic composition;

(j) To communicate the copyright work to the public by means of radio broadcasting, telephoning, telegraphing, or any other method for transmitting sounds or pictures.

The exclusive grant (a) is broadened to authorize the public use of the copyright work "in any manner or by any means whatsoever," and very material changes from present law are proposed in (l) where the exclusive right granted the copyright owner to perform a musical composition publicly or "to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced," does not limit this right, as does our present law, to public performance for profit.

Our present law follows this last grant of such exclusive right with a detailed proviso to permit such reproduction of music by phonographic records, rolls, or other similar contrivances upon payment of a royalty fixed by law at 2 cents for each reproductive part manufactured. The present bill eliminates not only the permission to so use the music "whenever the owner of a musical composition has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work," but also eliminates the fixed statutory royalty, leaving the payment for authorized reproduction to be fixed by agreement, and the obligation to record a notice of use is dispensed with.

A proviso to the paragraph provides, however, as already pointed out, that the performance of copyright musical works by churches or public schools can not be prohibited if given for charitable or

educational or religious purposes "unless a fee is charged for admission to the place where the music is so used."

One of the most embarrassing restrictions on the copyright proprietor under existing law is his inability to make a partial or qualified assignment of his copyright. The law gives to the author of a book, for example, the exclusive right to publish it, to translate it, to make a motion picture of it, to dramatize it, and to represent it on the stage. While all these are separate rights comprised in his copyright and are entirely different in character and must be exploited in a different manner he can not under our present law make a separate assignment.

The bill attempts to remedy this by providing:

That copyright under this or previous acts of the United States may be assigned, granted, or mortgaged, or may be bequeathed by will. In order to be valid such assignment, grant, or mortgage shall be in writing signed by the author or other owner of the copyright. Such owner of the copyright in any work may assign, grant, or mortgage the entire copyright, either generally or subject to limitations, for the entire period of the copyright or for a limited time, or for a specified territory; and he may so assign, grant, or mortgage any separate right or rights recited in section 12 of the act, and may grant any interest in any such right or in the entire copyright by license; but any separate right or use not collectively or specifically assigned shall remain the property of the author of the work or other owner of the copyright therein.

The bill further provides that—

The author or his assigns may prevent infringement of, or interference with, any or all of their respective rights by legal means and may obtain damages as provided by this act for any act or acts in violation of any such rights.

And adds for safety also a proviso requiring, however —

That any such assignment, grant, license, or mortgage shall specify and clearly describe the rights granted under this act or previous acts of the United States which are so assigned, granted, mortgaged, or licensed.

The bill provides that such assignment, grant, or license may be recorded and if not recorded within three or six months "shall be void as against a subsequent purchaser for a valuable consideration, without notice, whose assignment has been duly recorded," and further provides that no action shall be maintained by an assignee for the infringement of any right "until the instrument under which he claims shall have been recorded."

Some special provisions are inserted to protect the rights of authors. I will not attempt to explain these in detail. I suppose it will suffice if I set out the leading amendments and ameliorations proposed in the bill. An example is the endeavor to confirm to the author his rights reserved under old contracts. It is provided, for example—

That in the case of any copyright registered prior to the time when this act goes into effect by a proprietor under a contract, express or implied, by which some of the rights included in the copyright were reserved to the author, the ownership of the said rights is hereby confirmed to the author, or his assigns, who shall be entitled to dispose of them or to bring an action in case of their infringement as fully as the author could do under this act had copyright been originally obtained by him.

Another example is to safeguard the interests of authors who surrender to newspapers or periodicals their contributions for publication without any specific contract. The bill declares that while the publisher of such newspaper or periodical shall be held to be the

first owner of the general copyright in its contents, under such circumstances it is enacted—

That in the case of any literary or other contribution therein the author thereof shall be the owner of the copyright, and in the absence of agreement to the contrary he shall be deemed only to have licensed the publisher to print and publish the said contribution.

Registration of the claim of copyright is made optional, and it is expressly provided:

That in any action for infringement of copyright in a work for which no registration has been made, copyright in such work shall nevertheless be presumed to subsist, and if the author's name is indicated thereon, it shall be presumed that the person so named is the author of the work until the contrary is proved. If the work is anonymous or pseudonymous, the publisher whose name appears on the work shall be entitled to protect the rights of the author.

The provisions as to the optional deposit of copies and registration are very carefully prepared with well-considered details, but they do not differ very greatly from actual practice under present law, care being exercised to check the accumulation of a great quantity of useless material which involves a considerable service cost.

Mr. REID. Did I understand you to say that this bill has been prepared with great detail and care; is that what you said there?

Mr. SOLBERG. Yes. I will repeat it if you want. The provisions as to the optional deposit of copies and registration are very carefully prepared with well-considered details—and I think I may claim it extends to the entire bill.

The provisions as to the copyright office are practically the same as under existing law, and I shall not attempt a detailed explanation of them at this time, but shall hold myself in readiness to answer any questions or to explain any provision not readily understood at any time so far as it is possible for me to do so.

The provisions of existing law as to infringement of copyright and remedies have been taken over into the present bill with little change except a rearrangement in the order of the sections intended to add clearness and remove confusion where due to amendment.

A new statutory penalty of \$100 for each infringing performance of a choreographic work or pantomime has been added, as these are new classes of works protected, and a like penalty for the infringement of motion pictures to cover the omission to provide any statutory damages for such infringement in the present law.

A partial assignee is given the right of suit in his own name, with a proviso that all assignees must record their assignments before they can bring suit.

As already noted there are provisions for certain presumptions of law in suits for infringement when registration has not been made, and for giving the publisher of a newspaper or periodical the right to sue for infringement of copyright in any contribution which appeared in such paper, except where such publisher has acquired only a license to print the contribution in question.

The bill retains the common law protection for the rights of the author or copyright owner of an unpublished work as expressed in section 2 of the act of 1909, but provides further that nothing in the bill is to deprive the owner of the copyright in any work or the owner of any rights under the copyright which have been

infringed "of any remedy in law or equity external to the provisions of this act"

The elaborate and detailed provisions of section 31 of the act of 1909 prohibiting the importation of books were very fully discussed in the various public hearings on that act during 1906 and 1908. These provisions were inserted in the act to give support to the requirement that all books in the English language—in order to secure copyright in the United States—must be reprinted from type set within the limits of the United States. No single provision of the act of 1909 called out so much discussion, and I think it may be desirable to indicate briefly here where the full stenographic reports of that discussion may be found in case any one desires to follow up the matter in the printed report of the hearings. In "Arguments before the Committees of Patents" June 6-9, 1906, at pages 18-19, 36-41, 53, 57-58, 62-66, 91-92, 178-179; in the hearings for December 7, 8, 10, and 11, 1906, at pages 53-56, 58-77 (librarians), 79-80, 93-94, 121-126, 190-193; in "Revision of copyright laws, hearings before the Committee on Patents," March 26-28, 1908, at pages 12-13, 120-124, 134-138, 140-148, 167, 241-242, 412-426; and a very elaborate summary by the Librarian of Congress on "The importation of authorized foreign editions of a work in which there is domestic copyright," pages 382-411.

The inclusive statements of the pages occupied by the discussions will indicate the interest in this particular subject of the bill.

Prior to 1891 our copyright laws contained no provisions prohibiting importation except in the case of pirated copies. The prohibition of importation of unauthorized copies is essential to copyright protection and the bill so provides, and that such illegal importation shall be deemed to infringe the copyright. When the requirement of manufacture in the United States was inserted in the act of March 3, 1891, it was provided, in order to give force and full effect to such compulsory remanufacture, that—

The importation into the United States of any book, chromo, lithograph, or photograph so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and it is hereby, prohibited. * * *

The articles enumerated in sections 512 to 516, inclusive, of the free list of the tariff act of 1890 were made exceptions to this inclusive prohibition of importation.

In 1909 the compulsory manufacturing provisions were reenacted. But the prohibition of importation of copies of the authorized original edition was confined to books. The original proposals for such prohibition met with strong opposition, and modifications were finally incorporated permitting the importation for individuals and libraries, etc., of one copy for use and not for sale.

In the present bill all these restrictions on the importation of copies of the authorized edition of the foreign author's book are eliminated. These prohibitive provisions are corollary to the requirement of American manufacture and when that is abrogated, logically these restrictions should also be abrogated.

On the other hand, there has been complaint that the provisions of section 31 of the act of March 4, 1909, permit this limited importation, so far as libraries, etc., are concerned, of copies of foreign reprints of books by American authors, whether authorized or not.

To meet this situation the bill provides that piratical copies shall be prohibited importation for sale or hire or other distribution in the United States, and that—

Such prohibition of importation shall extend also to any authorized foreign reprint of an American author's work or of a work by an alien author domiciled or resident in the United States, whenever an agreement authorizing such reprint shall stipulate that copies of such reprint shall not be brought into the United States: *Provided*, That such agreement shall have been recorded in the copyright office at Washington, and that the owner of the United States copyright shall have notified in writing the Secretary of the Treasury and the Postmaster General that the importation of copies of such work is in contravention of such agreement.

It is believed that this control by the American author or his publisher of the importation of foreign reprints of such American author's book into the United States is reasonable and necessary to meet conditions arising under and due to the act of 1909. It is parallel to the frequently cited prohibition of importation into England of the well-known Tauchnitz reprints of English books. These are cheap editions of English and to some extent American books published in the English language for circulation in Germany and on the Continent under agreement that copies are not to be exported into England. Notice to that effect is usually printed in the copies, and their importation is stopped upon due notice to the English customs officials.

It is to be observed, however, in this connection, that there is no corresponding prohibition of importation into Germany or other European countries of copies of the original English edition of such books. The circulation of the authorized copies of the original book is neither barred nor restricted.

This question mainly concerns the importation into the United States of copies of the original English book in competition with the reprint of that book by an American publisher who has secured a license to reissue the book or to whom has been assigned the English author's copyright for the United States. Under the present obligatory manufacture of the English book in order to secure any copyright for it in the United States the importation of the original authorized copies is prohibited when the copies are imported for sale.

The bill proposes to eliminate the requirement of American manufacture of the book, but does not propose prohibition of importation of the original English book nor any restrictions upon its circulation. The English author, upon our entry into the union, will automatically secure copyright in the United States, which means a protected American market for his work. He may either export copies to the United States to supply the entire demand there for his book or arrange for its republication in the United States. In either case he will receive an agreed-upon royalty for every copy of his book sold in the United States. He may, when arranging for the republication of his book, agree not to sell copies of his original edition in the United States.

It is a question of policy which Congress must determine, whether the copyright statute itself should contain provisions to prohibit or restrict the importation into the United States of copies of the English author's original edition whenever he has assigned his copyright for the United States to an American publisher or has licensed the latter to republish his work.

THE NEW REPUBLIC

February 11, 1925

A NEW copyright bill is now pending before Congress so much superior in every respect to the existing law that it unquestionably deserves to pass. It was drawn at the request of the Authors' League of America by Thorvald Solberg, the Register of Copyrights, who, out of his own broad experience and without consultation with anyone on any point, prepared what can fairly be regarded as an ideal copyright proposal. Under its terms all literary and artistic productions are protected, automatically, as soon as produced. Such protection continues through the lifetime of the author and an additional fifty years. A badly needed reform permits the author of any work to sell separately various rights in connection with it—the right of publication, that of performance, etc. The author would also control the right of reproduction over the radio, as he clearly should. Present restrictions on royalties paid to composers for phonograph records and player-piano rolls, limiting them to two cents each, would be abolished. The proposed law would work no hardship on publishers, or anyone else honestly engaged in exploiting the work of creative artists. Particularly important is the fact that it would permit the United States to join the International Copyright Union, of which we are not at present a member. In short, there is everything to be said in favor of the proposed bill, and little against it. If Congress acted solely on considerations of the public welfare, it would become a law in short order.

1 action, suit, or proceeding instituted for infringement under
 2 the provisions of this Act.

3 SEC. 6. This Act shall take effect from the date of its
 4 passage.

73d CONGRESS }
 1st Session

S. 1928

A BILL

To enable the United States to enter the Inter-
 national Copyright Union.

By Mr. CUTTING

JUNE 6 (calendar day, JUNE 10), 1933

Read twice and referred to the Committee on
 Foreign Relations

To the Editor of The Publishers' Weekly,

Cosmos Club,
Washington, D.C.

Sir:

In your issue of March 31st you criticize my contribution to the April number of the Library Quarterly on "Copyright and Librarians". I will not occupy valuable space now to reply; but beg to announce that a verbatim reprint of my article will be sent to anyone interested who will furnish his name and address. I think that my statements will speak for themselves to every careful reader.

But I appreciate an opportunity to explain the copyright bill now before Congress (S.1928; H.R.5853.) You say "American authors and composers have much to think about as to the effect and fairness of this bill, and their interests should be kept paramount". Very true. Its sole purpose is stated in its title, namely, "A Bill to Enable the United States to enter the Copyright Union". To this last proposal not only the Authors' League of America but the National Association of Book Publishers are publicly committed, as recorded in the stenographic reports of the copyright hearings.

You also declare that the book publishers have always been active advocates of entrance into the Copyright Union, but that they are now concerned lest complications and difficulties might arise because under the bill "copyright for foreign authors would be on one basis and copyright for American authors on another".

The only differences would be (1) requirement of obligatory printing in the United States for American authors and release from that requirement for foreign authors; (2) requirement of American authors and release of foreign authors from deposit of copies, registration of copyright, and insertion of copyright notice. These are the requirements of our present copyright laws with which American authors must now comply. Wherein do they suffer then by continued compliance?

The bill provides (1) for the grant of automatic copyright to authors "from and after the creation of their work"; (2) for copyright for works of architecture and choreographic works and pantomimes; (3) for the exclusive right of the author to communicate his work for profit to the public by any system of broadcasting and (4) that "the author shall at all times have the right to claim the authorship of his work and the right to oppose every distortion, mutilation, or other modification of the said work which might be prejudicial to his honor or to his reputation, as well as the right to restrain the publication and/or the performance of the mutilated work".

These are all rights extended by the bill to American authors; rights, valuable rights, which they do not now have. Is it credible that American authors desire to reject the grant to them of these new rights? I do not think so.

As concerns retroactive protection for the works of foreign authors who have been heretofore deprived of it, it is absolutely required to enable the United States to enter the Copyright Union, and it is merely an act of common justice and honesty long delayed. This was provided in the Vestal bill (H.R.12549) which was supported by both authors and publishers as well as the Publishers' Weekly, and was passed by the House of Representatives on January 13, 1931. The proviso to sec.2 of the present bill carefully safeguarding Americans who had heretofore used uncopyrighted works by foreign authors, is the same provision which was contained in the Vestal Bill.

Entry into the Union moreover will give American authors automatic protection in every country within the Union and access to new world markets for their productions. On the other hand it is well not to ignore what authors may stand to lose if the United States does not enter the Copyright Union.

The representative of one of the most important American copyright interests writes: "This is a bill, I think, in the public interests and certainly it is tremendously in the interest of American authors and composers." And he continues:

"There is no question in my mind but that the United States must soon adhere to the Convention or else our citizens are going to find their works universally appropriated abroad. In other words, the adherents to the Berne Convention are not going to permit our citizens to secure protection in their countries simply through our people securing a copyright in some one of the adhering countries with which the United States happens to have a reciprocal treaty."

In this my correspondent is referring to article 6 of the Copyright Convention providing authority to permit any union country to withdraw copyright protection heretofore accorded to American authors. It is known that such retaliatory action has already been threatened and may presently be put into effect unless our own authors and publishers become sufficiently alive to their own copyright interests to give support to this endeavor to have fair treatment extended to foreign authors and artists.

THORVALD SOLBERG

NOTE: This letter was refused space in the Publishers' Weekly.

THE INTERNATIONAL COPYRIGHT UNION

The entry of the U. S. into the Copyright Union would secure to all American authors, artists, composers and dramatists immediately upon the creation of any of their works, automatically and without any formalities, complete legal protection in each of the 37 countries now members of the Union---a protection not now enjoyed by our intellectual producers.

It would give them the great advantage of complete security while they were negotiating for the sale of their foreign rights or were taking the necessary time to obtain foreign publication of their works.

Moreover they would obtain valuable rights not now accorded to them abroad (except in Great Britain) namely protection for their unpublished works.

Mr. Richard C. De Wolf---a competent authority---declares in the New York Times of April 16.

It has been suggested that American authors would be discriminated against, after entry of the United States into the international copyright union, in that foreign authors would receive more favorable treatment under our laws than American authors. This entirely misses the point. The principle of the international copyright convention is not identity of treatment under national laws and under the convention but reciprocity of treatment. Foreign countries belonging to the union agree to give certain advantages to American authors, and in return the government of the United States agrees to give certain

other advantages to foreign authors. The principle is that of a quid pro quo, not of absolute equality of treatment, which would be utterly impossible unless the copyright laws of all countries were identical. American authors, therefore, should think of what they will gain in foreign countries and not of what foreign authors may gain in this country, which, after all, does not do the American author any particular harm, since he loses nothing. Certainly American authors should not fear competition on their own ground with the authors of other countries.

The Federal copyright legislation of the United States began with the act of Congress approved May 31, 1790, which followed the earlier State copyright laws from 1783 to 1786. The first act of general revision followed on February 3, 1831, with but two brief amendatory acts between.

The change of most importance made at that time was the extension of the period of protection from two terms of 14 years each to a first term of 28 years with a right of renewal for 14 years additional. This 1831 Act was amended by eight brief acts, providing for the recording of copyright assignments (1834); for depositing copies in the Library of Congress and Smithsonian Institution (1846 and 1855); for the sole right to print and to act dramas (1856); for the transfer of copyright deposits from the Department of State to the Department of the Interior (1859); for the extension of the right of appeal in copyright cases (1861); for the extension of copyright to photographs, etc. (1865); for a penalty of \$25 for failure to make the required deposit in the Library of Congress (1867).

A second general revision of the copyright law was made in sections 85 to 111 of the act approved July 8, 1870, which, revised as to phraseology, became chapter 3 of title 60, copyrights, of the Revised Statutes of the United States, adopted December 1, 1873. The act of 1870 repealed in express terms eight of the previous copyright acts from that of February 15, 1819, to that of February 18, 1867. It transferred the deposit of copyright articles and the registration of copyrights to the Library of Congress. By the amendatory act of June 18, 1874, Congress decreed that no suit for infringement could be maintained in default of printed notice of copyright, and provided that the registration of copyright for prints and labels should be made in the Patent Office—which last provision is still in force. In the appropriation act of March 3, 1879, transmission through the mails of publications violating copyright is prohibited. The act of August 1, 1882, provided for a less obtrusive notice of copyright on molded decorative articles.

On March 3, 1891, Congress passed the important act of that date which extended copyright protection in the United States to foreign authors, commonly called "The international copyright act." It provided for the presidential copyright proclamations, upon evidence of recip-

reciprocal protection, which have resulted in the establishment of copyright relations with 43 foreign countries; also for the making, printing, and distribution of the Catalogue of Copyright Entries, of which 148 volumes have been produced. This enactment also brought into our copyright legislation the much discussed obligatory manufacturing requirements, and their corollary provisions prohibiting importation.

Amendatory acts were passed from time to time. In 1893, providing for a review by the Supreme Court of the United States in patent and copyright cases, and for safeguarding cases of failure to deposit; in 1895, that no Government publication might be copyrighted, and for new damages in case of infringement of copyright; in 1897, for penalties for unauthorized public performance of dramatic and musical compositions, and for the printing of a false notice of copyright and the importation of articles bearing such false notice. The threat of foreign countries to refrain from sending articles for exhibition to the Louisiana Purchase Exposition led to the act of January 7, 1904, providing protection for articles exhibited for two years, and in the case of books, that if within that period two copies of the original work or of a translation of it in the English language manufactured in the United States were deposited the protection was extended for the full term of 28 years.

By the act of March 3, 1905, the author of a foreign book might deposit a copy of it in the Library of Congress within 30 days after publication; copies to contain a notice reading: "Privilege of copyright in the United States reserved under the act approved March 3, 1905, by ———." If within 12 months after first publication the title of such book was filed for registration and two copies of it were deposited in the original language or translated into English, "printed from type set within the limits of the United States," protection was accorded for 28 years from the date of recording the title of the work in the Copyright Office. The copies of the American edition were required to carry the prescribed statutory notice. This protection depended upon the reciprocal protection of American authors in the foreign author's country.

The appropriation act of February 19, 1897, provided for the organization of the Copyright Office and

the appointment of a Register of Copyrights, "who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to copyrights."

The present Register of Copyrights (the first United States official of that title) was duly appointed and took charge of the office on July 22, 1897. He promptly prepared a compilation of the copyright laws in force,¹ and a bulletin of instructions for making application for copyright registration.² A further careful study of the antecedent copyright legislation of the United States resulted in the compilation of a volume containing the full texts of all the copyright acts of the Federal Congress from 1790 to date, which was printed in 1900³ and enlarged and reprinted in 1906. Bulletins were also printed containing the text of the International Copyright Convention;⁴ instructions for copyright registration in England,⁵ to which was added in a second edition, the excellent digest of the English copyright law by Sir James Stephen;⁶ and a compilation of the copyright laws of Canada.⁷

¹ The Copyright Law of the United States of America in force Jan. 1, 1898, being the Revised Statutes of the United States, title 60, ch. 3, copyrights, as amended by the acts approved June 18, 1874, Aug. 1, 1882, Mar. 3, 1891, Mar. 3, 1893, Mar. 2, 1895, Jan. 6, 1897, Feb. 19, 1897, and Mar. 3, 1897, 23 pp. 8°. 1898. (Copyright Office Bulletin No. 1.)

NOTE.—Reprinted in revised editions from time to time.

² Directions for securing Copyrights. 18 pp. 8°. 1899. (Copyright Office Bulletin No. 2.)

³ Copyright Enactments, 1783–1900, comprising the copyright resolution of the Colonial Congress, 1783; the copyright laws of the Original States, 1783–1786; the constitutional provision concerning copyright legislation, and all the public and private copyright laws enacted by Congress from 1790 to 1900, together with the presidential proclamations regarding international copyright. Compiled by Thorvald Solberg, Register of Copyrights. 83 pp. 8°. 1900. (Copyright Office Bulletin No. 3.)

——— The same. Copyright Enactments of the United States, 1783–1906. Second edition revised and enlarged. 174 pp. 8°. 1906. (Copyright Office Bulletin No. 3.)

⁴ Text of the convention creating the International Copyright Union, Sept. 5, 1887, together with additional articles modifying the above text, signed at Paris, May 4, 1896. 13 pp. 8°. 1900. (Copyright Office Bulletin No. 4, pt. 1.)

⁵ Instructions for Registration for Copyright Protection within the British Dominions. 14 pp. 8°. 1900. (Copyright Office Bulletin No. 4, pt. 2.)

⁶ Copyright in England. Instructions for registration for copyright protection within the British Dominions. 2d ed. To which is added: A Digest of the English Copyright Law by Sir James Stephen, and copyright acts from 1873 to date. 101 pp. 8°. 1902. (Copyright Office Bulletin No. 5.)

NOTE.—This volume contained as an appendix, a list of all British copyright enactments, 1709 to 1902, with notations of modifications, amendments, and repeal, compiled by Thorvald Solberg, pp. 69–87.

At the time of taking charge of the Copyright Office in 1897, the copyright law in force consisted of the act of June 8, 1870, plus the provisions of 10 amendatory acts. It constituted a body of laws antiquated in form, inadequate in some directions, inconsistent and confusing in others, difficult of interpretation, application, and administration. Textual contradictions and inconsistencies abounded and the interpolation of the provisions of the amendatory acts into those of the Revised Statutes was frequently the cause of difficulty and doubt. The Attorney General of the United States, when called upon for an opinion concerning some provisions of the copyright law, said: "Under this kind of legislation it is impossible to arrive at any satisfactory conclusion as to what Congress really did intend by it."

Amendatory legislation was obviously required. In my annual reports I urged the need for a thorough revision of our copyright laws. With the report for 1903 I submitted a special Report on Copyright Legislation,⁸ recommending that the several acts then in force "should be replaced by one consistent statute, of simple and direct phraseology, of broad and liberal principles, and framed fully to protect the rights of all literary and artistic producers and to guard the interests of other classes affected by copyright legislation." With a view to encourage study of the questions involved and to facilitate the recording of suggestions, the provisions

⁷ Rules and Forms Relating to Copyright Registration in Canada, Together with the Canadian Copyright Law of 1886. 22 pp. 8°. 1900. (Copyright Office Bulletin No. 4, pt. 3.)

— The same. Copyright in Canada and Newfoundland. Rules and Forms for Copyright Registration in Canada, Together with the Copyright Laws of Canada, Newfoundland, New Brunswick, Nova Scotia, and Prince Edward Island. 3 p. l., 5-126 pp. 8°. 1903. (Copyright Office Bulletin No. 6.)

⁸ Report of the Register of Copyrights on Copyright Legislation. In Report of the Librarian of Congress for the Fiscal Year Ending June 30, 1903. 8°. 1903. pp. 437-593.

— The same. Report on Copyright Legislation. Reprinted from the Report of the Librarian of Congress, 1903. 159 pp. 8°. 1904.

CONTENTS: Present legislation, pp. 7-8; Textual revision, pp. 8-9; Copyright beneficiaries, pp. 9-12; Subject matter of copyright, pp. 12-17; Right of translation, p. 17; Term of protection, pp. 18-20; Statutory formalities, pp. 20-21; Filing of title, p. 21; Deposit of copies, pp. 22-23; Notice of copyright, pp. 24-25; Hawaii, Porto Rico, Cuba, and the Philippines, pp. 25-27; International copyright relations, pp. 27-29; Copyright Office administration, pp. 29-31; Recommendation, pp. 31-32; List of United States copyright enactments, 1783-1904, with notations of modifications, amendments, and repeals, pp. 33-42; Revised Statutes relating to copyrights, with notations, pp. 43-82; Bibliographical lists of foreign copyright laws, pp. 83-155.

of the Revised Statutes relating to copyrights were printed with the similar provisions of subsequent copyright enactments, in parallel columns on writing paper with wide margins, to permit annotations.⁹ At about the same time a complete bibliographical and chronological record of all proceedings in Congress in relation to copyright from April 15, 1789, to April 28, 1904, was compiled by the Register of Copyrights and printed in February, 1905.¹⁰

The agitation for amendment of the copyright laws led to the introduction of various amendatory measures, and five copyright bills were pending on the adjournment of Congress on March 3, 1905. Thereupon the Senate Committee on Patents (to which proposed copyright legislation is referred) made public its purpose "to attempt a codification of the copyright laws at the next session of 'Congress,'"* and the chairman of that committee (Hon. Alfred B. Kittredge) suggested that the Librarian of Congress should call a conference to consider such a codification. Under this authorization the Librarian of Congress arranged for such a conference and on April 10, 1905, sent out invitations to 26 associations supposed to have an interest in such legislation to be represented by delegates "authorized to submit suggestions to the conference, to participate in its discussions, and to cast votes on all questions submitted to a vote." This conference was held in New York City from May 31 to June 2, 1905.

Each delegate at this conference had in hand the special Report on Copyright Legislation, the writing-paper edition of the provisions of the Revised Statutes cited above, and the further compilation of the Revised Statutes on copyright printed under proper subject headings, with parallel references to corresponding provisions

⁹ The Revised Statutes relating to copyrights with notations of the provisions of the act of July 8, 1870, and all subsequent copyright enactments, together with a list of all the United States copyright enactments 1783 to 1904, with notations of modifications, amendments, and repeals. 55 pp. 4°. 1904.

NOTE.—Printed on writing paper with broad margins so as to permit annotations, suggestions, etc.

¹⁰ Copyright in Congress, 1789–1904. A bibliography and chronological record of all proceedings in Congress in relation to copyright from Apr. 15, 1789, to Apr. 28, 1904. 468 pp. 8°. 1905. (Copyright Office Bulletin No. 8.)

* Senate Report No. 3380, Fifty-eighth Congress, third session, Jan. 27, 1905.

in the copyright laws of other countries, intended to bring out the salient points of difference between our own and such foreign provisions for copyright protection.¹¹

At the first session of the conference it was arranged that the Register of Copyrights should prepare a draft of a copyright bill to be printed in time for use at the second session arranged to take place in New York November 1-4, 1905. This draft presented in proper form the proposals passed upon during the discussions at the first conference, arranged under suitable subjects. It was printed (October, 1905) in quarto form, double column, the right-hand half of the page being left blank for convenient annotation.¹²

The provisions of this memorandum draft were discussed at the second session of the conference by sections and disposed of by vote. In conclusion the Register of Copyrights was requested to prepare a revised edition, omitting provisions not approved and interpolating proposals voted. The "second print" was submitted to the Librarian of Congress on March 2, 1906.¹³ It was distributed well in advance of the meeting to all the delegates expected to attend the second session with a request that sections of the draft should be designated to which amendments would be proposed in substance, and for statements of proposals not included in the draft but thought desirable.

The third session of the conference on copyright was held in the Library of Congress, Washington, March 13 to 16, 1906. The result of its deliberations was a draft for a bill to amend and consolidate the acts respecting copyrights which was printed by the Library of Congress in small 4°, 25 pages, 1906. This bill was introduced in the House and Senate on Thursday, May 31, 1906, without change as H. R. 19853 and S. 6330 (59th Cong. 1st sess.). A public hearing on these bills before the Committee on Patents of the Senate and House of Repre-

¹¹ The provisions of the United States copyright laws, with a summary of some parallel provisions of the copyright laws of foreign countries. 51 pp. 4°. 1905. (Copyright Office Bulletin No. 9.)

¹² Memorandum draft of a bill to amend and consolidate the acts respecting copyright. 2 p. l., 74 pp. 4°. 1905. (Copyright Office Bulletin No. 10.)

¹³ Memorandum draft of a bill to amend and consolidate the acts respecting copyright. (Second print.) 57 pp. 4°. 1906. (Copyright Office Bulletin No. 10.)

sentatives, conjointly, was held in the Library of Congress June 6-9, 1906. As a convenience to the congressional committees, the Register of Copyrights prepared a digest of such direct amendments of the copyright bill as had been proposed at this public hearing and of such criticisms and suggestions for further amendment as had been received at the Copyright Office.¹⁴ The Register of Copyrights also prepared and printed an edition of the copyright bill with its provisions compared with the copyright statutes in force and with earlier United States copyright laws.¹⁵ These publications were available at a second joint public hearing of the Committee on Patents of the House and Senate, held on December 7-11, 1906. There were also presented to the committees at this hearing several separate substitute copyright bills privately printed, noticeably by Mr. Richard Rogers Bowker, of New York, a well-known author and publisher; by Charles Porterfield, Esq., of the Edward Thompson Co.; by Charles S. Burton, Esq., on behalf of the Melville Clark Piano Co., of Chicago, and by F. L. Dyer, representing the Edison Manufacturing Co. Meantime a number of amended texts of this copyright bill were presented to Congress by Members of the House of Representatives. Between May 31, 1906, and March 1, 1909, some 34 separate official prints in all of substitute bills for complete revision of the copyright laws, or of bills for special amendment of various sections, were submitted to Congress and printed.

A final third public hearing was held conjointly by the Senate and House Committees on Patents, March 26-28, 1908. A great number of persons were heard, including authors, composers, dramatists, publishers, typographers, librarians, and the legal representatives of many interests concerned with copyright legislation. The stenographic report of this hearing made a volume (with its appendixes) of 436 octavo pages. It included a careful compilation by the Librarian of Congress concerning "The importation of authorized foreign editions of a work in which there is domestic copyright" (pp.

¹⁴ Amendments proposed to the copyright bill (S. 6330; H. R. 19853), together with other criticisms and suggestions received and noted to date by the Copyright Office. In 3 parts with addenda. [312] pp. 4°. 1906.

¹⁵ The copyright bill (S. 6330; H. R. 19853), Fifty-ninth Congress, first session, compared with copyright statutes now in force and earlier United States copyright enactments. 86 pp.+pp. 44a-d. 4°. 1906. (Copyright Office Bulletin No. 12.)

382-411). The three volumes containing the stenographic reports of these hearings were printed in large editions and widely distributed. There was prepared in the Copyright Office a complete and carefully compiled general index to all three volumes, which was printed and supplied with each set.

As a result of the third public hearing on copyright legislation, the final bill from the Committee on Patents of the House of Representatives (H. R. 28192) was reported with recommendation for enactment on February 22, 1909, and a leaf of amendments were agreed to by the House Committee on Patents on February 26. These amendments were accepted by the Committee of the Whole House, and the bill was passed on March 3, and the Senate was so notified. Thereupon this House act was substituted in the Senate for the pending Senate bill (S. 9440), and was passed by the Senate on the same day, March 3, to go into effect on July 1, and the bill was signed by the President on March 4.

Thus was brought into operation on July 1, 1909, the third general revision of the copyright legislation of the United States, which, with some subsequent amendments, is still in force.

During the 20 years that have slipped by since the act of 1909 was passed a number of amendatory copyright bills have been presented to Congress. These have been listed and commented on from year to year in the Annual Reports of the Register of Copyrights. A few of these proposals have become law by the passing of the amendatory acts of August 24, 1912 (for registration of motion pictures); March 2, 1913 (for amendment of the certificate of copyright); September 18, 1913 (to protect foreign exhibitors at the Panama-Pacific Exposition); March 28, 1914 (for deposit of *one* copy of the foreign book); July 3, 1926 (for copyright of books *not* type set); May 23, 1928 (increasing copyright fees). An act approved December 18, 1919, was of special significance. Its principal purpose was to secure retrospective protection in the United States for books by foreign authors published during the war which had not secured protection in the United States because of conditions growing out of the war. The act provided protection for all such works published after August 1, 1914, by authors of countries with which the United States had

established copyright relations. This retrospective protection was based upon reciprocal copyright protection in the foreign country concerned and required the issuance of a presidential proclamation. Such proclamations were signed during 1920 and 1922 in behalf of the following seven countries: Austria, Denmark, Germany, Great Britain, Hungary, Italy, and New Zealand. The retrospective provisions of the act of December 18, 1919, were, of course, temporary and are no longer in force. The act, however, also amended the ad interim copyright provisions of the act of March 4, 1909, by increasing the period of 30 days for depositing the copy of the English book to 60 days from first publication, and the term of the ad interim copyright from 30 days to 4 months from date of such deposit, which amended provisions are still in force.

Since July 1, 1909, a great many bills have been presented to Congress proposing amendments of the copyright laws. For convenience of consideration these bills may be divided into three groups: (1) Bills proposing a general revision or recodification of the copyright laws; (2) bills drafted primarily to secure the entry of the United States into the International Copyright Union; (3) bills proposing some one or more specific amendments.

This last group would include a very large number of bills, many of no serious importance; comprising bills which were given little attention by the Committees on Patents, upon which no public hearings were arranged for and of which no reports were made to Congress. But there were four proposals of major importance with respect to which bills were introduced and given careful consideration: (1) Bills proposing new legislation to protect designs by copyright in lieu of patent; (2) legislation proposed with respect to an author's rights in relation to radio broadcasting; (3) legislation to cure the bad results following the compromise measures in the copyright act of 1909 with respect to the mechanical reproduction of music; and (4) legislation to cure the growing inconvenience in practice by reason of the non-divisibility of copyrights. This last difficulty has become one of increasing embarrassment, and a bill was intro-

duced on January 29, 1927, by Hon. Albert H. Vestal, chairman of the Committee on Patents of the House of Representatives, to provide that "all rights comprised in a copyright are several, distinct, and severable," and are subject to separate assignment, and to permit the assignee of each such separate right to sue in his own name for infringement of that right. The bill was favorably reported on February 23, 1927, was reintroduced (70th Cong., 1st sess.) as H. R. 8913 on January 9, 1928, and public hearings were held on the bill March 2, 20, and April 20, 1928. A second favorable report (H. R. Rept. 1103) was submitted, but the bill was passed over without action.

A most serious compromise proposal of the copyright act of 1909 were the provisions (secs. 1 (e) and 25 (e)) permitting the reproduction of music by mechanical instruments upon the payment of a royalty of 2 cents fixed by that act. On February 7, 1928, Mr. Vestal introduced a bill to repeal section 25 (e). Public hearings were held on April 3 and 11. An amended bill was introduced on May 1 (H. R. 13452), and on May 4 was reported favorably (H. R. Rept. No. 1520). The purpose of this proposed legislation is to repeal the fixed royalty of 2 cents and to permit the owner of the copyright of the musical work to make his own terms for such reproduction of the music. The committee in its report states that the provisions of the proposed amendatory act "will eliminate abuses and evils and injustices which have prevailed for 19 years, and is therefore recommended for favorable consideration."

The development of radio broadcasting promptly led to the introduction of bills concerning the rights of composers with respect to such use of their music. Joint hearings were held before the Committee on Patents on Senator Dill's bill (S. 2328 and H. R. 10353), which he explained was introduced to bring out the "Analogy between the use of copyrighted music for broadcasting by radio and its use on phonograph records." The hearings on this bill extended from April 5 to April 22, 1926, but resulted in no action. Meanwhile in several decisions by the Federal courts it has been held that the exclusive right of public performance of music, as granted by section 1 (e) of the copyright act of 1909, includes an exclusive right of radio broadcasting.

In an early report (1913) the Register of Copyrights directed special attention to the unsatisfactory situation with respect to protection for artistic designs for articles of manufacture. Protection was required to be secured under the provisions of the design-patent law, with a procedure approximating that followed in the case of letters patent generally; involving unavoidable delay, considerable cost, and such difficulty of registration as resulted in an average entry of but 652 designs annually, according to the Report of the Commissioner of Patents for 1911. The Register of Copyrights stated his belief—

that an amendment of the copyright law of the United States is called for to secure the protection of ornamental designs for articles of manufacture, to provide suitable remedies in case of infringement, and to prescribe a sufficient but reasonably economical registration in behalf of the numerous American and foreign draftsmen engaged in the preparation of such designs; and also to provide the manufacturers of such articles with the necessary protection against infringement.

The year following, 1914, a bill (H. R. 11321) was introduced by Hon. William A. Oldfield, chairman of the House Committee on Patents, Sixty-third Congress, second session. It was followed by other substitute bills and one (H. R. 17209, 64th Cong., 1st sess.) was favorably reported on August 18, 1916. The war intervened to delay further discussion of this proposed legislation, but on May 11, 1922, a conference, called for by the Commissioner of Patents, was held at the Waldorf Hotel in New York, at which meeting was present, among others, the Commissioner of Patents, the Register of Copyrights, and Mr. E. W. Bradford, the proponent of the design bill. It was agreed that a new bill should be drafted proposing the repeal of the design patent law and protection under the copyright law for ornamental designs applied to or embodied in manufactured products. On December 5, 1924, Mr. Vestal introduced a bill (H. R. 10351), on which hearings were held January 13, 14, and 27, 1925. On February 16, 1925, Mr. Vestal reported favorably the amended bill (H. R. 12306, H. Rept. 1521, 68th Cong., 2d sess.).

On December 21, 1925, Mr. Vestal introduced a new bill (H. R. 6249, 69th Cong., 1st sess.), on which public hearings took place on February 18 and 19 and on May 7, 1926, following which a revised bill (H. R. 13117) was introduced on June 28, 1926.

In the Seventieth Congress, first session, Mr. Vestal again introduced a bill for design copyright on January 16, 1928 (H. R. 9358). Public hearings took place on the bill on March 16 and 24, following which Mr. Vestal introduced an amended bill (H. R. 13453) on May 1, 1928. No further action has been recorded. The proposed legislation appears to be approved in principle by all who are most concerned, and the divergences as to details have been adjusted. It has been approved by the Patent Law Association of New York City, and strongly urged by Henry D. Williams, Esq., chairman of its copyright committee. It seems reasonable to believe that this much-needed protection for capable designers, who are now at the mercy of unscrupulous infringers, may be brought up for discussion in the coming winter session of the new Congress and be enacted.

Among the manufacturers who have suffered most severely from piracy are producers of new textile designs for silk fabrics, and the Silk Association of America (Inc.) has recently held meetings and determined upon action to secure needed relief, including adequate legislation. Among the active members are such well-known persons as Charles Cheney, of Cheney Bros.; Joseph P. Berger, of the Shirley Silk Co.; Frederick H. Knight, of the Susquehanna Silk Mills; B. Edmund David, Benjamin Frank, Sol C. Moses, and many others.

GENERAL REVISION OF THE COPYRIGHT LAWS

Two groups of the amendatory bills submitted since the copyright act of March 4, 1909, are of special interest: (A) Bills for a general revision of the copyright laws; (B) bills drafted for the purpose of securing legislation to permit the entry of the United States into the International Copyright Union.

The movement for the fourth general revision of the copyright laws of the United States started (so far as Congress is concerned) with the introduction in the House of Representatives on March 24, 1924, of the bill H. R. 8177, by Hon. Frederick William Dallinger, which bill was reintroduced by Mr. Dallinger on May 9, 1924, as H. R. 9137. Late in the same year the Council of the Authors' League of America, by formal resolution, requested the Register of Copyrights to draft a bill for the general revision of the copyright laws and

to permit the United States to enter the International Copyright Union. This draft was completed and printed on December 1, 1924.¹⁶ It was promptly submitted to the Authors' League, was indorsed by that association without change, and was presented to Congress. It was introduced in the House of Representatives by Hon. Randolph Perkins, of New Jersey, on January 2, 1925, and printed as H. R. 11258 (68th Cong., 2d sess.), and was presented to the Senate by Hon. Richard P. Ernst, of Kentucky, on February 17, 1925, as S. 4355. Public hearings by the Committee on Patents of the House of Representatives were held on this bill on January 22, February 3, 10, and 24, 1925. On February 24, 1925, upon a motion by Hon. Sol Bloom, a subcommittee was appointed to consider copyright revision during the recess. Mr. Bloom called informal meetings for discussion on April 22, May 8, and July 8, 1925, in New York City. The result of these deliberations was the introduction on March 17, 1926, by Mr. Vestal, of a new bill for general revision (H. R. 10434, 69th Cong., 1st sess.). Meantime Mr. Perkins had reintroduced his bill (the Authors' League bill) without change on December 17, 1925 (H. R. 5841). On April 15, 16, 29, 30, 1926, public hearings took place on these two bills. H. R. 10434 was reintroduced by Mr. Vestal on January 9, 1928 (70th Cong., 1st sess.), as H. R. 8912. Since that date there has been no congressional action on any of these bills.

INTERNATIONAL COPYRIGHT

The discussions in the public press and in Congress due to the introduction and enactment of the law approved December 18, 1919, to secure protection for the works of foreign authors unprotected in the United States by reason of the war, led to renewed public consideration of the long-time pending question of the entry of the United States into the International Copyright Union. This union was established in 1887 and gradually has been accepted by all the great powers of the world, excepting China, Russia, and the United States.

¹⁶ Draft for a bill to amend and consolidate the acts respecting copyright and to permit the United States to enter the International Copyright Union. 15 pp. 4°. Government Printing Office: Library Branch, Dec. 1, 1924.

The United States has been unable to enter the union because a basic article of the convention upon which the union is founded is that the enjoyment and the exercise of the rights accorded by the convention are not subject to any formality, but that protection is automatic in the case of any and all works by authors who are citizens or subjects of any country within the union. The various requirements in the copyright legislation of the United States as to deposit of copies, registration, printing of notice of copyright, and, above all, the obligatory manufacture of the work within the United States, has prevented the entry of the United States into the Copyright Union up to this time.

By 1922 there had been secured a fairly general consensus of opinion that the United States ought to be a member of the Copyright Union. There was little or no active opposition except upon the part of the phonographic record makers. The printers had agreed to accept the release of foreign authors from the typesetting provisions of the copyright act if these requirements were left in force so far as works by American authors were concerned.

The various bills for the desired general revision of the copyright laws, referred to above, all contained provisions to secure the entry of the United States into the International Copyright Union. But it was realized that it would be possible to propose a special act to secure such entry, omitting other proposals for amendment, and on April 28, 1922, a bill (H. R. 11470) was introduced in the House of Representatives by Hon. Jasper N. Tincher, of Kansas (67th Cong., 2d sess.), to authorize the President to effect and proclaim the adhesion of the United States to the International Copyright Convention and to extend to foreign authors the rights and remedies accorded by our copyright laws. Senator Lodge introduced this bill (S. 4101) on December 6, 1922 (67th Cong., 4th sess.), and it was reintroduced in the House of Representatives by the Hon. Ewin Lamar Davis, of Tennessee, on January 5, 1923, as H. R. 13676, and on December 6, 1923 (68th Cong., 1st sess.), Hon. Sol Bloom reintroduced Mr. Davis's bill without change. Mr. Tincher had meantime, on January 26, 1923, introduced an amended bill (H. R. 14035), and he reintroduced that bill without change on December 5,

1923, as H. R. 573 (68th Cong., 1st sess.). On December 6, 1923, Senator Lodge introduced a new and much simplified bill (S. 74) "to permit the United States to enter the International Copyright Union," which was presented to the House of Representatives by Hon. Florian Lampert, on the same day, as H. R. 2704. No congressional action was taken with respect to any of these bills, and there was an interval of several years without any congressional discussion of international copyright. On January 18, 1928, however, Mr. Vestal introduced a bill (H. R. 9586, 70th Cong., 1st sess.) of the same title as Senator Lodge's and containing the same provisions.

The nine bills explained above all proposed entry into the International Copyright Union by adherence to the International Copyright Convention of 1908. Meantime, an International Copyright Conference was held at Rome from May 7 to June 2, 1928, and after serious discussion the text of the 1908 convention was amended and re-drafted and the new text in a French version was signed on June 2, 1928. On December 10, 1928, Mr. Vestal introduced a bill to authorize the President of the United States to effect the adhesion of the United States to this convention signed at Rome on June 2, 1928, without proposing any other amendment of the copyright legislation. This bill specifically releases the foreign author from obligatory manufacture or deposit of copies and copyright registration, but permits optional registration.

The 20 years which have passed since the going into effect of the copyright act of 1909 have demonstrated the need for its amendment, and ultimately it is to be hoped a simplified codification may be accepted based upon sound principles and from which will have been removed the arbitrary technical details which encumber the act of 1909.

Meanwhile authors, artists, composers, dramatists, librarians, university professors, leading members of the bar, as well as publishers and motion-picture producers, are on record as believing that the United States should become a member of the International Copyright Union. At the public hearings on the Perkins bill, extending over several days, much testimony was recorded to this effect, and many members of the present Authors' League of

America appeared in support of that bill and its proposal for the entry of the United States into the Copyright Union. Mr. Robert Underwood Johnson, who had been active in bringing about the international copyright bill of 1891, reminded the committee of the distinguished American authors who at that time had declared themselves in favor of entry into the union; among them were W. D. Howells, Nelson Page, Whitcomb Riley, Mark Twain, Robert Collier, William V. Moody, and the editors of Harper's, Scribner's, and the Century magazines.

At this hearing appeared also Maj. George Haven Putnam, the present head of the well-known publishing firm of G. P. Putnam's Sons. Major Putnam has followed in the footsteps of his father, who was one of the earliest advocates of international copyright, and has been an outstanding worker for copyright betterment throughout his long life of private and public activity. At this hearing he declared with emphasis, "I have *always* advocated coming into the International Copyright Union." In his recent contribution to the new Encyclopædia Britannica, on copyright in the United States, he declares that—

It is the hope of authors, publishers, and others who are interested in literary property, and who want to bring about the largest possible distribution of literary productions throughout the civilized world, that in the near future all barriers and restrictions interfering with the recognition of the property rights of the producer and his assign may be removed.

It is the fundamental purpose of the International Copyright Union to secure the elimination, to use Major Putnam's words, of "all barriers and restrictions" which interfere with the automatic protection of literary and artistic property rights throughout all countries which are members of the Copyright Union. If the United States would now enter this union by adherence to the International Copyright Convention signed at Rome on June 2, 1928, it would make a long stride toward that world position with respect to copyright which it ought to occupy. The union has been in effect since 1887. It now includes 36 countries.

The countries of the whole world have been brought much closer together by means of the great modern discoveries and inventions. By the use of radio broadcasting even a simultaneous international audience is possible for the work of the composer and dramatist. All

this accentuates the necessity for that greater uniformity of copyright legislation and automatic copyright protection which the International Copyright Convention endeavors to secure.

There are two possible methods of procedure upon the part of the United States to secure entrance into the union. There may be direct Executive action as heretofore in the case of the Patent and Trade-Mark Conventions and the Pan American Copyright Convention of 1910. Or Congress may pass an act authorizing the President to notify the Swiss Government that the United States desires to enter the International Copyright Union and will adhere to the convention signed at Rome on June 2, 1928. In either case subsequent legislation will be required to bring the copyright statutes into accord with the articles of convention, but it might prove an advantage if such legislation were postponed for a time to allow actual experience to demonstrate just what changes will be required after entry into the Copyright Union has been effected.

The third paragraph of article 28 of the convention of 1928, provides that—

Countries that are not within the union may, until August 1, 1931, enter the union by means of adhesion either to the convention signed at Berlin November 13, 1908, or to the present convention. After August 1, 1931, they can adhere only to the present convention.

In my last year's report I carefully summarized the changes made in the text of the 1908 copyright convention by the Rome text of 1928 (pp. 14-20). One purpose in doing this was to convince the people who had expressed approval of adherence to the 1908 convention that there were no changes accepted at the Rome conference which would prevent such persons from approving adhesion to the 1928 text. It seems reasonable that the United States, after a delay of 40 years, should enter the union by adherence to the latest amended text of 1928, rather than to the convention of 1908, which by the provisions of the article quoted above will be definitely discarded on August 1, 1931.

THORVALD SOLBERG,
Register of Copyrights.

The above covers 1790 to 1929; for 1930-36, see Annual Reports of the present Register of Copyrights.

PRESENT COPYRIGHT SITUATION
THE COPYRIGHT BILL

(H. R. 5853 : S. 1928)

BY

THORVALD SOLBERG

REGISTER OF COPYRIGHTS, 1897-1930



Preprinted from the

PROCEEDINGS OF THE AMERICAN LIBRARY ASSOCIATION CONFERENCE

Chicago, October, 1933.

PRESENT COPYRIGHT SITUATION

THE COPYRIGHT BILL

(H. R. 2853 - 81st Cong.)

BY

THOMAS B. JOHNSON

SENATOR FROM THE STATE OF IOWA



Copyright, 1929, by

THE UNIVERSITY OF IOWA LIBRARIES, IOWA CITY, IOWA

Copyright, 1929, by

PRESENT COPYRIGHT SITUATION

IN THE absence of Carl L. Cannon, chairman of the Committee on Book Buying, the following resolution, submitted by the Committee on Book Buying and the Committee on Federal Relations, was read by Carl H. Milam:

"Whereas, it is generally admitted that the United States should join with other countries of the world in attempting to secure world-wide and uniform protection for literary and artistic property, therefore, we, the Council of the American Library Association, hereby

"Resolve, That Congress be respectfully petitioned

"To permit the United States to enter the International Copyright Union by adherence to the Convention for the Protection of Literary and Artistic Works, signed at Rome on June 2, 1928, by passing as written Senate Bill 1928 and H.R. 5853 of the Seventy-third Congress, first session."

Senate Bill 1928

The text of Senate Bill 1928, introduced by Senator Cutting, is given in full below:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That copyright throughout the United States and its dependencies shall subsist in the work of alien authors, not domiciled in the United States, by virtue of the adherence of the United States to the Convention of Berne for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Rome on June 2, 1928.

"Sec. 2. From and after the date upon which the adherence of the United States to the said convention of 1928 becomes effective, copyright protection shall be accorded without compliance with any conditions or formalities whatever for all works by such alien authors who are nationals of any country which is a member of the International Copyright Union; as well as for any work which may be or has been first published in a country which is a member of the said union: *Provided*, That as to copyright in works not previously copyrighted

in the United States, no right or remedy given pursuant to this Act shall prejudice lawful acts done or rights in or in connection with copies lawfully made or the continuance of business undertakings or enterprises lawfully undertaken within the United States or any of its dependencies prior to the date on which the adherence of the United States to the said convention of 1928 goes into force; and the author or other owner of such copyright or person claiming under him shall not be entitled to bring action against any person who has prior to such date taken any action in connection with the exploitation, production, reproduction, circulation, or performance (in a manner which at the time was not unlawful) of any such work whereby he has incurred any substantial expenditure or liability.

"Sec. 3. Copyright is hereby granted and secured by this Act to all authors entitled thereto from and after the creation of their work, whether published or unpublished, including works of architecture and choreographic works and pantomimes, and the duration and termination of such copyright shall be governed by the provisions of Sections 23 and 24 of the Act of March 4, 1909 (U.S.C., title 17): *Provided*, That the duration of copyright in the United States shall not in the case of the work of any alien author extend beyond the date upon which such work has fallen into the public domain in the country of its origin as defined in said convention of 1928.

"Sec. 4. The rights granted in Section 1 of the said Act of 1909 (U.S.C., title 17) shall include the exclusive right of the author to communicate his work for profit to the public by any system of broadcasting; and the author of any copyrighted work, even after the assignment of the copyright in such work, shall at all times have the right to claim the authorship of his work, and the right to oppose every distortion, mutilation, or other modification of the said work which might be prejudicial to his honor or to his reputation, as well as the right to restrain the publication and/or the performance of the mutilated work.

"Sec. 5. The Supreme Court of the United States shall prescribe such additional or modified rules and regulations as may be necessary for practice and procedure in any action, suit, or proceeding instituted for infringement under the provisions of this Act.

"Sec. 6. This Act shall take effect from the date of its passage."

Thorvald Solberg, Washington, D. C., then made the following statement to the Council in support of the resolution approving Senate Bill 1928:

Present Copyright Situation

It is my privilege briefly to explain to you why the procedure indicated in the bill S. 1928, which has been read to you, as introduced in the Senate of the United States on June 10, 1933, by the Honorable Bronson Cutting of New Mexico, is especially appropriate for proposal at the coming session of Congress which convenes on January 1, 1934, and why the American Library Association and its individual librarian members may feel entitled to urge Congress to take the action proposed.

Although the International Copyright Union was established as far back as 1887, the United States has never become a member. One may well ask why the United States has not heretofore entered the Copyright Union. An adequate answer carries us back nearly one hundred and fifty years. When in 1790 we enacted our first federal copyright act and accorded protection to American authors, we declared that such protection in the United States should not extend to any book "written, printed, or published by any person not a citizen of the United States."

It was more than one hundred years later before we partly remedied this fundamental injustice by enacting in 1891 that copyright in the United States was not confined to citizens of our own country. But at that time when extending to alien authors copyright protection, we imposed upon them the obligatory manufacture of their books within the United States, in order for them to obtain the legal protection extended to them by the Act of 1891. We thus perpetrated another serious breach in the principles of

copyright, and we have this still upon our national conscience and are called upon to obtain remedial action from Congress. In the Act of 1909, friends of copyright reform succeeded in securing release from American typesetting for the works of foreign authors, printed in languages other than English.

The result is that obligatory American manufacture is now confined, so far as foreign authors are concerned, to works in the English language, with the consequence that British authors have been able to secure legal protection in our country only for something like 15 per cent of their published books. They have lost the possible profits upon their 85 per cent of unprotected works, and much larger sums which might have come to them by the use of such works for motion pictures.

When I have the good fortune, as now, to address this large group of American librarians—a large body of intellectual workers—I am moved to stress the *principles* of copyright which are involved in this matter and to point out, as clearly as I may be able, that this is not a question of mere expediency. Neither is it primarily or entirely a matter of practical benefit for our own authors. Admittedly our intellectual producers will certainly be benefited by the entry of the United States into the International Copyright Union. But, what is of far greater importance, there is here offered to us an opportunity now to rectify a great and long suffered injustice.

We must first of all release all foreign authors from this oppressive burden of the obligatory manufacture of their books in the United States. This is required, not only as an act of justice, but by the articles of the copyright convention. This last is now well understood and agreed to by American printers and publishers.

The typesetting clauses in the Copyright Act of 1891 brought in their trail into our copyright legislation, for the first time, the automatic exclusion of copies of the foreign author's authorized edition of his book. This prohibition of importation, as proposed by the American publishers, also contravenes copyright principles.

Two years ago the A. L. A. and many educational bodies, were widely advertised

as giving their support to the last Vestal copyright bill. That measure, fortunately for copyright, failed of enactment. It was a bill that contained several detrimental provisions of such character that the friends of real copyright advance were pleased that it did not become law. It also added restrictions upon the importation privileges of libraries; imposed more serious restrictions upon the importation of books which is now permitted by law by *individual book buyers*, and finally, it proposed to limit the books which any person arriving from abroad may now bring into the United States with his personal baggage to *five* works.

This ridiculous proposal has now been eliminated from the latest copyright bill for general revision of the copyright laws, and in the Senate Bill 1928, which the resolution offered by your committee urges Congress to enact, there are no provisions changing any of the importation clauses of our present copyright laws.

In that bill it is specifically provided that from and after the date upon which the adherence of the United States to the Copyright Convention of 1928 becomes effective, copyright protection shall be accorded without compliance with any conditions or formalities whatever for all works by such alien authors who are nationals of any country which is a member of the International Copyright Union; thus releasing foreign authors from publication with notice; deposit of copies; registration of copyright claims and American manufacture.

The Copyright Convention of Rome of 1928 definitely provides that countries which are not within the union, after August 1, 1931, can adhere *only* to the present Convention of 1928. Senate Bill 1928 proposes adherence to that convention. It also provides for such amendment of the existing copyright laws as is necessary to meet the stipulations of the articles of the Copyright Convention—namely (1) protection without compliance with conditions or formalities; (2) protection from and after the creation of the author's work, whether published or unpublished—that is, “automatic” copyright; (3) copyright for works of architecture, choreographic works and pantomimes—not now protected by our laws; (4) protection

for the “moral right” of the author; and (5) *retroactive* protection for the previously produced uncopyrighted works of foreign authors.

The Vestal bill (H.R. 12549) which passed the House of Representatives (the bill approved by the A. L. A. and other educational associations) proposed adherence to the Copyright Convention of 1908, then already twenty years old and supplanted by the carefully revised text adopted at Rome on June 2, 1928.

There were two special reasons why certain parties interested in copyright wished adherence to the old convention. The new convention of 1928 requires the enactment of legislation to secure to the author the right at any time to claim the authorship of his work and to oppose every distortion, mutilation, or other modification of it which might be prejudicial to his honor or his reputation; and it insists also that there shall be *retroactive* protection for the former unprotected works of foreign authors.

There was opposition to both of these proposals; but that opposition must now give way and Senate Bill 1928 provides for the above explained “moral right” of the author to oppose unauthorized changing of his work; and also that the copyright protection accorded to the works of an alien author shall include “any work which may be or has been first published in a country which is a member of the International Copyright Union.” So far as the author's control over his work to prevent detrimental changes is concerned, it will be noticed that our own authors will obtain the benefits of this new legislation. American authors have long needed such control over their own books and protection against unauthorized changes in the text of such books.

I trust that what I have already said will have made it clear to my audience that entering the copyright union by adherence to the 1928 convention is of the greatest importance for copyright advance. It affords at last the opportunity to extend to our brother authors beyond the seas, full legal recognition of their literary property in the creations of their genius. For nearly one hundred and fifty years acknowledgment in our country of the foreign author's exclusive

and unqualified property right in his book has been but partial and wholly inefficient. We cannot make good to him what he may have lost by our long delayed sense of justice and right; but we can now at least make clear that from the day the United States enters the International Copyright Union all works by all authors are the legally acknowledged exclusive property of such authors and are protected against misappropriation.

Since the beginning of 1930 there have been introduced in Congress thirteen bills for the general revision of the copyright legislation of the United States, and there have been twelve public copyright hearings before committees of Congress. All these bills have failed of final enactment into law. There seems no reasonable hope that any new bill of a similar character can be passed at the coming session of Congress. All but two of these bills have contained provisions to enable the United States to enter the copyright union and all the later bills have proposed adherence to the Rome convention.

It is believed to be a more practical procedure at this time to pass this bill, Senate 1928, for the one purpose, namely, entry into the copyright union by adherence to the Copyright Convention of Rome. If this bill is passed by the Senate it is certain that the President will submit that convention to the Senate for its approval of his ratification and proclamation of our adherence.

This bill (except the Dill bill and a design copyright bill) is the only copyright measure before this Congress and can be taken up at any suitable time after January 1, 1934.

I hope this Council and librarians individually will recognize that here is our one chance to secure the greatest advance in relation to copyright within our possibilities, and if you will, as an Association and as

individuals, send your approval of the enactment of Senate Bill 1928 and its expected sequence—the transmission of the Copyright Convention of 1928 to Congress for the Senate's approval—you may help to accomplish the greatest advance in relation to copyright that I ever expect to live to see.

* * *

President Lydenberg then asked M. Llewellyn Raney if he wished to make any statement. Dr. Raney responded as follows:

"There is no necessity for my speaking. The Association's actions on copyright have been uniform throughout. In the bill of which Mr. Solberg has been speaking, we have come full circle round to the simple proposal with which this discussion started eleven years ago: viz., to remove from the American escutcheon a blot that has lain there since May 31, 1790. Bluntly stated, that blot is the legalization of literary piracy, the denial to a writer in English of exclusive title to his work unless it be manufactured on American soil. This resolution seeks merely to remove that stain. It is high time we single out that one ugly fault in our copyright law, confess it openly to the world, put it under foot, and stop there."

A motion to adopt the resolution in support of Senate Bill 1928 was made, voted upon, and carried. In closing the discussion, Mr. Lydenberg commented:

"I think it fair for us to rest in confidence that the Association will act accordingly. In addition to that, however, each one of us can aid mightily if when he or she gets home he writes to his senator, to both senators, and to the representative from his district, urging the support of these two members of Congress. It is a simple matter. Urge them to support the bill for copyright legislation, recommending adherence to the Convention of 1928."



THE PRESENT INTERNATIONAL
COPYRIGHT SITUATION



THREATS of REPRISAL

BY
THORVALD SOLBERG
REGISTER OF COPYRIGHTS,
from
1897 to 1930

THE PRESENT INTERNATIONAL
COPYRIGHT SITUATION

Copyright 1934

by

THORVALD SOLBERG

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THE PRESENT INTERNATIONAL COPYRIGHT SITUATION

PRELIMINARY—ACT OF 1891, ETC.

FOR a clear comprehension of the actual copyright situation, especially with respect to our international relations, a brief exposition of the salient facts involved is desirable.

Up to July 1, 1891, statutory protection for literary and artistic property in the United States was confined to works by authors who were either "citizens of the United States or residents therein." The Act of Congress of March 3, 1891, which went into effect on the first of July of that year, eliminated from our law the qualifying words quoted above, and thus, by implication, extended the rights and remedies accorded by the copyright laws of the United States then in force (Revised Statutes of 1873, title 60, chapter 3 and the subsequent amendatory acts) to authors who were neither citizens nor residents of the United States. This extension of copyright to alien authors, however, was not automatic to any or all foreign authors, but only "reciprocally" to such writers as were citizens or subjects of a country which permitted to citizens of the United States "the benefit of copyright on substantially the same basis as to its own citizens."

In the Copyright Act approved March 4, 1909, this formula was revised and restated with greater explicitness as follows:

"Provided, however, That the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only:

"(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

"(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the

United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

"The existence of the reciprocal conditions aforesaid, shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require."

These are the provisions of our copyright laws now in force. Any foreign country, therefore, which desires to secure for its nationals the rights and privileges accorded by our laws must make clear to the President that one of the above quoted alternatives has been complied with; and thereupon the President promulgates the required proclamation to that effect and declares that the citizens or subjects of the country named in the proclamation are entitled to the benefits conferred by our copyright laws.

COPYRIGHT PROCLAMATIONS AND TREATIES

It is well to indicate concisely the development of this exchange of literary-property protection. The first copyright proclamation, dated July 1, 1891, was issued in behalf of Belgium, France, Great Britain and Switzerland. It has been followed in succession and in the order here indicated by others in behalf of Germany, Italy, Denmark, Portugal, Mexico, Chile, Costa Rica, Netherlands, Cuba, Norway, Austria, Luxembourg, Sweden, Tunis, Poland, Czechoslovakia, Rumania, Finland, Irish Free State, Greece, Palestine, Free City of Danzig and Argentina (1934).

When the revised copyright statute of March 4, 1909, provided (section 1e) for "copyright controlling the parts of instruments serving to reproduce mechanically a musical work," it was stipulated that this right "shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention agreement or law, to citizens of the United States *similar rights*."

Thereupon followed a new series of Presidential copyright proclamations declaring that such "similar rights" had been extended to citizens of the United States by each of the nations enumerated above except Portugal, Spain, Mexico, Costa Rica, China, Japan, Tunis and Siam. General reciprocal copyright protection in the United States has been extended to 27 nations and to 19 of these the rights to mechanical reproduction of music.

COPYRIGHT TREATIES

In addition to these so-called "reciprocal" international-copyright relations entered into under the provisions of Sections 1(e) and 8 of our Copyright Act of March 4, 1909, certain treaties have been negotiated by the United States with foreign countries containing agreements or stipulations with respect to copyright.

There have been bilateral treaties involving copyright between the United States and China (treaty of October 8, 1903, article xi); Japan (Treaty of November 10, 1905, and the treaties of May 19, 1908 (for copyright protection (a) in China, and (b) in Korea); Hungary (copyright convention effective October 16, 1912); Siam (treaty of December 16, 1920).

The copyright agreement entered into between the United States and Germany on April 15, 1892, was also in the form of a treaty, but it was not submitted to the Senate for its approval.

The treaty of Peace with Spain (April 11, 1899) in article xiii provided that copyrights and patents acquired by Spaniards in Cuba, Porto Rico, the Philippines and other ceded territories, "shall continue to be respected," and that Spanish scientific, literary and

artistic works should be admitted free of duty into those areas for a period of ten years.

PAN-AMERICAN COPYRIGHT CONVENTIONS

There has also been a special series of agreements entered into by the United States and South and Central American countries, known under the designation of Pan-American Copyright Conventions. The first of these was proposed at the so-called "South-American Congress" which met at Montevideo in August 1888. A copyright treaty was proposed which was adopted January 11, 1889, and was ratified by Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, and Venezuela. Brazil and Chile have not proclaimed their ratifications, but the adherence of the following European countries was proclaimed: Belgium, France, Italy, Austria, Germany and Spain. Of these six countries all were recognized by Argentina and Paraguay; but Bolivia recognized only the adherence of Austria and Germany. The United States has never adhered to the copyright treaty of Montevideo of January 11, 1889.

The second Pan-American Copyright Convention "between the United States and other powers on Literary and Artistic copyright" was signed in the City of Mexico on January 27, 1902. Up to the present time the following countries have adhered—Guatemala, Salvador, Costa Rica, Honduras and Nicaragua. The United States ratified this treaty on March 16, 1908 and it was proclaimed on April 9, of that year.

The third Pan-American Convention signed at Rio de Janeiro on August 23, 1906 "to protect Patents, drawings and industrial models, Trade-marks and Literary and Artistic Property," proposed the establishment of two Bureaus for voluntary registrations, one at Havana and the other at Rio de Janeiro. To this Convention the United States did not accede.

The fourth Pan-American "Copyright Convention between the United States and other American Republics" was signed at Buenos Aires on August 11, 1910, by the United States and nineteen Latin-American Countries. It was ratified by the United

States on March 12, 1911, and was proclaimed on July 13, 1914. It is effective as between the United States and Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Paraguay and Uruguay.

A fifth Pan-American Conference was held at Santiago, Chile, from March 25 to May 3, 1923, and four treaties were discussed but none on copyright. The "Sixth International Congress of American States" met at Havana, Cuba, from January 16 to February 20, 1928. President Coolidge and Charles Evans Hughes, then Secretary of State, were present. A revised text of the Copyright Convention of August 11, 1910, was adopted with reservations upon the part of Chile and Venezuela. It has been ratified by Panama, Guatemala, Costa Rica and Nicaragua, this last country on April 4, 1934. The United States has not adhered.

INTERNATIONAL COPYRIGHT UNION

Meantime there had developed in Europe and spread throughout the civilized world an extension of the principles of copyright protection for the creations of authors—literary works—artistic works—dramatic works—musical works; indeed, a protection to include every intellectual production of the human mind.

This great advance in copyright, originating in Switzerland, and developed and perfected in that country by means of a series of international copyright conferences, was the organizing of a union of all countries that acknowledged the principle of copyright, with the ultimate view of the unification of such protection throughout the world and securing to the authors of any one country, automatically, protection throughout all countries which were members of the established copyright Union. This fine and practical association of the countries included in the Union proposed, went into effect on September 9, 1887, under the title: "Union internationale pour la Protection des œuvres littéraires et artistiques," and it includes the larger number (more than forty) of the civilized countries of the world, excepting, however, these three—China, Russia and the United States!

The text of the Berne Convention of 1886, upon which the Copyright Union was founded was thoroughly revised at Berlin during a copyright conference extending from October 14 to November 13, 1908; and was further revised at a conference held in Rome from May 7 to June 2, 1928, and was signed there on this latter date.

COPYRIGHT CONVENTION OF ROME

The careful deliberations at Rome, resulted in the adoption of a new text of the Berne Copyright Convention, signed there by delegates from 28 of the countries of the Union represented. Delegates from the following six Union countries did not sign: Bulgaria, Estonia, Hungary, Ireland, Luxemburg, and the Netherlands. Three Union countries were not represented at the conference at Rome: Haiti, Liberia and Palestine. Liberia retired from the Copyright Union February 22, 1930.

Delegates present from the following countries signed the convention: Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Free City of Danzig, Denmark, Finland, France, Germany, Great Britain, Greece, India, Italy, Japan, Monaco, Morocco, New Zealand, Norway, Poland, Portugal, Rumania, Spain, Sweden, Switzerland, Syria and Lebanon and Tunis.

There were delegates at the Rome copyright conference from twenty-one non-union countries as follows: San Marino (Italy), Latvia, Lithuania, Yugoslavia, Turkey, Persia, Egypt, Siam, Bolivia, Chile, Colombia, Cuba, Ecuador, Guatemala, Salvador, Uruguay, Venezuela and the United States. Our delegation consisted of the American Ambassador to Italy, the Hon. Henry Prather Fletcher; the Hon. Sol Bloom, member of Congress, and myself as Register of Copyrights. We had no power to discuss or vote upon any proposal, but were by courtesy allowed to express our personal opinions on suitable occasions.

Paragraph 1 of article 27 of the Rome document provides that "the present convention shall replace in the relations between the countries of the Union, the Convention of Berne of September 9, 1886, and the acts by which it has been successively revised,"

and it is provided in paragraph 3 of article 28 that "Countries that are not within the Union, may, until August 1, 1931, enter the Union, by means of adhesion, either to the convention signed at Berlin, November 13, 1908, or to the present convention. After August 1, 1931, they can adhere *only* to the present convention," that is, the convention signed at Rome on June 2, 1928. Its official French title is "Convention de Berne pour la Protection des œuvres littéraires et artistiques du 9 Septembre 1886, révisée à Berlin le 13 Novembre 1908 et à Rome le 2 Juin 1928."

It should be clear from the foregoing that since August 1, 1931, only this treaty of Rome of 1928, could be in question as the copyright convention to which the United States could and should adhere. But this must be very positively stated because persistent insistence has been made that even now our adherence could and should be to the older treaty of Berlin of 1908.

It will be observed that although the Copyright Union has now existed since 1887 the United States has not yet become a member. During this long period of nearly half a century, there has been intermittent but persistent endeavor to obtain the entry of the United States into the Union. Several Presidents have referred to the subject and intimated to Congress that entry was desirable, and numerous bills have proposed it.

COPYRIGHT LEGISLATION PROPOSED

That the United States should enter into the Copyright Union has become a fixed opinion and as early as 1922, legislation was proposed to secure that result. In 1924 I was requested, as the Register of Copyrights, by the Authors' League of America to draft a bill for the general revision of our copyright laws and "to permit the United States to enter the International Copyright Union." That bill (68th Congress, 2nd Session, H.R. 11258, January 2, 1925) was followed by a series of bills proposing the general revision of our copyright legislation; nearly all of which bills contained provisions for our entry into the Copyright Union.

There were a dozen such bills in all, the proposals of which were considered in thir-

teen public hearings, including discussion upon proposals for entry into the Union. One of this series of bills (71st Congress, 2d session, H.R. 12549) introduced by Mr. Albert H. Vestal, Chairman of the Committee on Patents of the House of Representatives, provided (sec. 59) that:

"Copyright shall subsist in the work of alien authors by virtue of adherence to the International Copyright Union . . . as provided by this Act, on and after the date on which the adherence of the United States to the Convention Creating an International Union for the Protection of Literary and Artistic Works goes into effect." This bill was passed by the House on January 13, 1931, and was referred at once to the Senate Committee on Patents. Public hearings before that committee were held on January 28 and 29, 1931, and on February 23 the House Act (H.R. 12549) was reported from that committee with amendments, with the recommendation that, as amended, it should be passed. It failed, however to secure consideration in the Senate for more than a few of its first sections and was not enacted.

The Senate Committee in its report summarizes the major amendments proposed in the Senate bill, as follows:

(1) "Automatic copyright, by which a copyright is conferred upon the author immediately he creates his work;" (2) "Divisible copyright, which permits the author to dispose separately of the several rights which he has in his creation" . . . ; (3) "International copyright, which guarantees to American authors the copyright of their works throughout the important countries of the world without compliance with any formalities."

The Senate Committee Report dwells at length on this last and explains the advantage of the treaty agreement over the present "back door" security now taken advantage of by our authors; namely first or simultaneous publication of an author's work in one of the Union Countries.

After the Vestal bill (H.R. 12549) had passed the House of Representatives on January 13, 1931, President Hoover, on January 21, transmitted to the Senate the Berne Convention revised and adopted at

Berlin in 1908, and Senator Borah, then Chairman of the Committee on Foreign Relations, to which the Convention was necessarily referred, declared that if the proposed copyright legislation was enacted, that committee was prepared to favorably report the copyright convention of 1908 and recommend the adherence of the United States thereto.

A determined effort was made in the Senate to secure discussion of the bill and separate votes were secured on several sections; but filibustering wasted the precious closing hours of the Congress and no final action was possible before the adjournment of the Seventy-Second Congress.

COPYRIGHT IN THE SEVENTY-THIRD CONGRESS

Friends of Copyright and of better international copyright relations, realizing that the pressure of the extraordinary amount of business before the first session of the 73rd Congress, would make it impossible to secure attention for the usual elaborate bill for a general revision of the copyright legislation, approved of the introduction of a brief Bill whose sole purpose was to provide for the entry of the United States into the International Copyright Union.

A bill to accomplish that end, drafted by myself, was introduced in the House of Representatives on May 31, 1933, by Robert Luce, and in the Senate (without change of text) on June 6 (calendar day, June 10) by Bronson Cutting. The House bill (H.R. 5853) was referred to the Committee on Patents and that in the Senate (S. 1928) to the Committee on Foreign Relations.

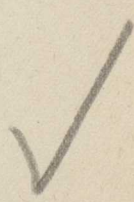
On January 29, 1934, there was presented to the Secretary of State a petition signed by the presidents of twelve of our leading universities: Columbia; Yale; Harvard; Princeton; Johns Hopkins; and the Universities of Chicago; California; Iowa; Minnesota; North Carolina; Texas and Wisconsin.

In this petition attention is called to what is described as "the discreditable position occupied by the United States in reference to international copyright." It is

pointed out that "it is still true that, under our law, an author has no redress for piracy if the language of his work is English and the manufacture is foreign." It is declared that "There has come to be virtually unanimous agreement that the manufacturing clause, as applied to foreigners, should be repealed," and that "Adherence to the Convention would at once meet the demands of honor, improve international relations and be a boon to American authorship. It would take high rank in copyright annals. Such a course is earnestly recommended."

In the second session of the Seventy-third Congress, on February 16, 1934, the Secretary of State (Hon. Cordell Hull) submitted to the President the new Rome text of the Berne copyright convention with the suggestion that it be transmitted to the Senate for consideration in lieu of the Berlin text of that treaty, of 1908, which had been submitted by President Hoover on January 21, 1931.

The Secretary's letter contained a list of all the countries already adhering to the convention of 1928, and he pointed out that adherence by the United States would give to American authors in those countries of the Union the enjoyment for their literary and artistic works the same rights as are enjoyed by authors of similar works who are nationals of such countries, and further explained that such protection was important because "The United States has become a great producer of literary and artistic works, which include, of course, not merely the writings of authors and composers, but the output of vast industries such as the motion-picture studios. The demand for these products is world-wide. At present protection against piracy is, in many places, non-existent or inadequate. Adherence to the Convention for the Protection of Literary and Artistic works, which represents the most complete and modern conception of such protection, is the most important step that can be taken to remedy the present situation. It would assure to American authors and artists the enjoyment of copyright without formality in all of the countries which are parties to it, as well as such other privileges as each country respectively accords to its own citizens."



"The United States would, of course, be obligated reciprocally to accord to the citizens of the other countries copyright without formality and, in general, the protection which it accords to its own citizens."

The President three days later, on February 19, transmitted these documents to the Senate and they were referred to the Committee on Foreign Relations. The Secretary of State promptly thereupon, on February 24, addressed a letter to Senator Key Pittman, Chairman of that committee, in which he directs attention to the copyright convention and to Senator Cutting's bill (S. 1928) declaring that the object of the bill is to bring the statute laws of the United States into conformity with the convention. He also refers to an enclosed note from the British Ambassador of December 20, 1933, described as the latest of a long line of communications setting forth "What, in our opinion is an entirely legitimate complaint on the part of the British Government concerning the treatment of British books under existing copyright legislation," and states that "the desire of the British Government would be entirely met if the United States should become a party to the convention referred to" (the Rome copyright convention of 1928).

"INTERNATIONAL COPYRIGHT UNION" SENATE HEARINGS

The Senate Committee on Foreign Relations a month later, on Wednesday, March 28, 1934, began public hearings on the copyright convention of 1928 and the copyright bill S. 1928. The Chairman read into the record the letter addressed to him by the Secretary of State, referred to above, quoting a paragraph from the note of December 20, 1933, of the British Ambassador who makes mention of the "powerful currents of opinion in the United States which have moved in favor of the accession of the United States to the Copyright Convention of the Berne Union."

The full text of the Ambassador's note was not read nor printed; but the Secretary, in the concluding paragraph of his own letter, referred to the definite threat of possible retaliatory British legislation contained in

the British note in the following words: "While, of course, the object of this Government in proposing to enter the International Copyright Union, is the protection of American literary and artistic interests in other countries, I feel that the attitude of the British Government, particularly the possibility of injurious reprisals, should appropriately receive the consideration of the Committee on Foreign Relations."

The actual hearings opened with a short statement made by Senator Cutting who explained the introduction of the bill, S. 1928, and its relation to the proposal for adherence to the copyright convention. He said that it perhaps was not *necessary* to enact the bill, "but it certainly could do no harm, in addition to ratifying the treaty, to enact legislation of this kind which would make it perfectly clear what the United States is doing to modify the present law in order to comply with the terms of the treaty."

Following Senator Cutting, a strong plea for adherence to the Copyright Convention on the ground of the "moral issue involved" was made by the Hon. Robert Underwood Johnson, our former Ambassador to Rome, who is well-known as a distinguished poet, as the Director of America's Hall of Fame, and as a long-time champion for better international copyright conditions.

Mr. Johnson declared that "The Constitution of the United States, after providing in the preamble for the forming of a more perfect Union, next described the purpose of the Constitution as being 'to establish justice'. Daniel Webster said that 'justice is the first concern of man on earth,' and I therefore am going to appeal to you, first of all, in discussing this subject, on the ground of justice, and in doing so briefly to rally to my support the opinions of some of the most distinguished Americans who have heretofore recorded themselves in favor of this great principle of intellectual property."

Mr. Johnson made a compelling statement bringing into it reminders of previous declarations with respect to the extension of justice to authors, the names of such Americans as Noah Webster (the father of copyright in the United States), Daniel Webster,

Henry Clay, Ralph Waldo Emerson, Henry W. Longfellow, John G. Whittier, George Bancroft and James Russell Lowell, declaring that they all "stood for right", and he quoted Lowell's couplet, declaimed before a copyright committee of the House of Representatives:

"In vain we call old notions fudge,
And bend our conscience to our dealing;
The Ten Commandments will not budge,
And stealing will continue stealing."

Following Mr. Johnson there were statements in favor of the Congressional action proposed, by Dr. Wallace McClure (of the Department of State), Dr. M. Llewellyn Raney (of the University of Chicago) and Thorvald Solberg (the former Register of Copyrights).

Mr. M. J. Flynn, representing the International Allied Printing Trades' Association made a long speech in opposition to entry into the Copyright Union, based on the loss of work by our printers, which he contended would follow. He declared that the bill S. 1928, "Virtually wipes out the manufacturing sections of the present law." The bill, however, does nothing of the kind. The very quotation he made from the bill in support of his statement plainly shows that the proposed release from compliance with conditions and formalities would apply only in the case of "works by such *alien authors* who are nationals of any country which is a member of the International Copyright Union." All the prescribed conditions and formalities of our present copyright laws are left to apply as now to all works by authors who are citizens or residents of the United States.

Upon being questioned by the Hon. Sol Bloom, Member of the House, who was present, he did not deny that the printers had in 1931 agreed to the provisions of the Vestal bill (H.R. 12549) abrogating the obligatory printing of English books, which it was necessary to do in order to gain admission into the copyright union; but he contended that the printers ought not to agree now and "thus add to unemployment in this country."

The second Committee hearings took place on May 28 and 29 before a sub-committee of three Senators, Mr. F. Ryan Duffy, Chairman, Mr. Frederick Van Nuys and Mr. Simeon D. Fess. Opportunity was first given to those in favor of adherence to the Copyright Convention to make supporting statements and Dr. McClure fortified his arguments for possible adherence to the Convention before the enactment of amendatory legislation, by submitting for printing Caleb Cushing's opinion of 1854, as Attorney General of the United States, in answer to the question—whether as the American law then stood, "a real reciprocity would be insured by the convention [of 1853] to British subjects, or whether it would be necessary that a law of the United States Congress should be passed to that effect?" Mr. Cushing's response was summarized as follows:

"I think the stipulations of the convention have a legal effect fully tantamount to that of a new legislative provision in the same terms; and therefore that no new act of Congress is 'necessary' to insure a real reciprocity in the premises to subjects of Great Britain." The text of that "Convention for the Establishment of International Copyright", signed at Washington on February 17, 1853, by Edward Everett, Secretary of State, and John F. Crampton, Minister Plenipotentiary of Great Britain, was also ordered printed, as well as a list of all countries now in the Copyright Union, —42 countries and about 50 colonies and dependencies.

Mr. James L. Brown, Chief of the Patent, Trade Mark and Copyright Section of the United States Bureau of Foreign and Domestic Commerce, submitted a resume of our international Copyright relations and a statement on the "Protection of Intellectual Property Abroad." Thorvald Solberg explained the new rights accorded to authors under the articles of the convention and the provisions of the bill S. 1928, and he secured the insertion in the Report of the hearings of the letter of the President (previously published) addressed on April 25, 1934, to Robert Underwood Johnson, reading as follows:

The White House,
Washington.

April 25, 1934.

My dear Mr. Johnson:

This is to acknowledge and to express appreciation for your letter of April 16, 1934, in which you advocate the ratification of the Convention for the Protection of Literary and Artistic Works, which I sent to the Senate requesting advice and consent to adherence thereto on the part of the United States, on Feb. 19 of the present year.

Needless to say, I fully concur in your sentiments and assure you that it would be most pleasing to me if, early in my administration, I should be empowered to make the United States a party to this convention.

Sincerely yours,

FRANKLIN D. ROOSEVELT.

Editorial comment in support of adherence to the Copyright Convention of 1928, was also ordered printed, including articles from *The New York Times* of April 1 and May 23, 1934; *The Nation* of June 6; the *Washington Post* of May 26; the *Boston Evening Transcript* of June 2; the *New York Herald-Tribune* of May 24; and the *New York World-Telegram* of June 1. *World Affairs*, Washington, for June, 1934, also contained a favorable editorial note.

Declarations in favor of entry into the Copyright Union were made at these hearings by William L. Brown (*Register of Copyrights*); William Hamilton Osborne (for the Authors' League of America,—"the national organization of authors, playwrights, and screen writers, with a membership of about 4000"); F. G. Melcher (for the National Association of Book Publishers); John H. MacCracken (for the American Council of Education); M. Llewellyn Raney (for the American Association for the Advancement of Science and twenty-six other learned societies). Mr. John Macrae, head of the publishing house of E. P. Dutton & Co. declared:

"I am opposed to Dr. McClure's suggestion that we enter the Union now. . . .

I repeat that as a publisher I oppose entering the Berne Union. We are 100 percent in favor of the Berne Union, but we do want to be protected properly before we enter it."

Opposition to the entry of the United States into the copyright union was expressed by Senator Clarence C. Dill. Also by William C. Tufts, representing map publishers who stated that they individually and as a group were in favor of entering the copyright union, but only "under proper protection to the American publishing houses," meaning apparently the extension of compulsory American manufacture to geographical productions.

Opposition to entry was also reported upon behalf of the Fox Film Corporation; the Hays Organization; the Motion-Picture Producers of America; the Motion-Picture Theatre Owners of the United States; the National Association of Broadcasters; the National Publishers' Association (with "a membership of approximately 150 periodical publishers") and the American Federation of Labor.

The following twenty-two Senators were at the time members of the Committee on Foreign Relations: Key Pittman, Chairman; Joseph T. Robinson; Walter F. George; Hugo L. Black; Robert F. Wagner; Tom Connally; J. Hamilton Lewis; Nathan L. Bachman; Elbert D. Thomas; Frederick Van Nuys; F. Ryan Duffy; James P. Pope; Robert J. Buckley; William F. Borah; Hiram W. Johnson; Arthur Capper; David A. Reed; Simeon D. Fess; Robert M. La Follette, Jr.; Arthur H. Vandenberg; Arthur R. Robinson and Henrik Shipstead.

At the hearings, in addition to Senator Cutting, the following senators, members of the committee were present at times: George, Bachman, Thomas of Utah, Van Nuys, Pope, Capper, Fess and Robinson of Indiana.

No report was submitted before the adjournment of Congress.

When the Seventy-fourth Congress re-assembles on January 3, 1935, while no copyright bills will be before it, the Copyright Convention of Rome of 1928, will still be in the hands of the Committee on Foreign Relations of the Senate, and can be given

consideration by that committee. It is very desirable, therefore, that there should be a clear understanding of the provisions of the articles of that convention. A brief summary follows.

THE PROVISIONS OF THE CONVENTION OF ROME OF 1928

There is much misunderstanding as to the actual provisions of this treaty and just how and to what extent adherence by the United States may affect the rights of our authors and publishers as well as producers of dramas, musical and artistic works created by nationals of the United States. The convention consists of thirty articles of which those from 21 to 30, inclusive, contain miscellaneous provisions, including such as concern the work of the "Bureau of the International Union for the Protection of Literary and Artistic Works," established at Berne, Switzerland, under the control of the Swiss Government. It compiles and publishes monthly a journal printed in French, entitled: *Le Droit d'Auteur*, "treating questions concerning the purposes of the Union." The expenses of the Bureau are covered by a fund to which each country of the Union subscribes proportionally.

During the period of forty years in the life of the Berne Copyright treaty, from 1887 to 1928, some fundamental developments have occurred that should be understood. The original basis of union proposed was that an author of one of the countries of the contemplated Union should obtain in the other countries exactly the same rights that were enjoyed by him in his own country, that being supposedly implied in a guarantee of reciprocal copyright protection.

But a more reasonable construction of "reciprocal copyright protection" now prevails, and the agreement has been reached that an author who is accorded copyright in his own country should also be protected in each of the other countries of the Copyright Union, but under the provisions of the laws in force in each such country; it being recognized that these laws would necessarily vary, but would grant substantially reciprocal protection. (art. 5)

It is now also agreed that any work by an author citizen of one union country, should be protected in all the other countries, if his work was first published in any one of them, and this, notwithstanding his work might have failed to obtain protection in his own country. In other words, the great fundamental advance has been secured that these international copyright relations are no longer based upon a reciprocity which implies an exchange of exactly equal rights and privileges for the same term of protection; but that the authors of one country of the Union are to secure relatively equal rights in all the other union countries.

The official statement is (article 4.)

"Such rights, in the countries other than the country of origin of the work, as the respective laws now accord or shall hereafter accord to nationals, as well as the rights specially accorded by the convention."

The same article defines at length the "country of origin of the work" and what is to be understood by "published works" and "works which have been issued" ("œuvres publiées" and "œuvres editées") and declares that "The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art and the construction of a work of architecture do not constitute publication." Article 1 provides that "the countries to which the present convention applies are constituted into a Union for the protection of the rights of authors in their literary and artistic works."

WORKS PROTECTED

In the second article these terms are defined to include "all productions in the literary, scientific and artistic domain, whatever the mode or form of expression." Twenty five classes of works are specifically enumerated including two that are not now included in our copyright laws: (a) works of architecture, and (b) choreographic works and pantomimes. Translations, adaptations, arrangements of music, and compilations from different works are included in the protection accorded—all to be "protected as original works without prejudice to the rights of the authors of the original works."

Photographic works and works obtained by any process analogous to photography, and "works of art applied to industry" (industrial designs) are included, and the countries of the union are pledged to secure protection in the case of all of these works enumerated.

TERM OF COPYRIGHT PROTECTION

The convention proposes a specific term of copyright protection—the life of the author and fifty years after his death. In the case of joint authorship it is provided that "The duration of the author's right belonging in common to collaborators in a work is calculated according to the date of the death of the last survivor of the collaborators," and shall in no case expire before his death; but authors of a country granting a shorter period of protection can not claim in other Union countries a protection of longer duration.

Adherence to the convention, however, does not obligate acceptance of the union term. Congress is at liberty to leave the period of protection now in force without change, or to fix by law a new term, and to adopt special copyright terms for photographic works or for posthumous, or anonymous or pseudonymous works.

RIGHT OF TRANSLATION

Authors enjoy in the countries of the Union the exclusive right to make or to authorize the translation of their works during the whole term of the right in the original work. But article 25 provides that in lieu of acceptance of the above provisions of article 8, it is possible to substitute "provisionally at least" the provisions of article 5 of the Convention of Berne of 1886, revised at Paris in 1896; which provides that this exclusive right of translation shall cease if after ten years no authorized translation has been published.

THE AUTHOR'S "MORAL RIGHT"

A new article in the Convention of 1928 (6 bis) extends to the author the right to always claim the authorship of his work and "to object to every deformation, mutilation or other modification of the said

work, which may be prejudicial to his honor or to his reputation." The incorporation into our copyright legislation of this safeguarding of the author's moral control over his work is obligatory and is highly desirable. It has been contended that our authors have these rights now under common law. Even so, it seems desirable to declare them in an amended copyright statute. It is left to the national legislation of each country to establish the conditions for the exercise of these rights and their safeguarding.

It has been argued in opposition to article 6 bis, that the rights granted the author are "inalienable." This word is not used in the article of convention. The British Board of Trade has publicly expressed the opinion that "the article does not limit the power to transfer the rights granted if the author makes a contract containing express conditions to this effect."

In a personal talk about copyright matters with the well-known London barrister E. J. MacGillivray, Esq. he expressed himself in agreement with the Board of Trade's opinion, and declared that article 6 bis would give the author no greater right or remedy than he has at present at common law; that is to say, a right to recover damages in an action for libel if a work of his published under his name is altered in such a way as to be defamatory.

RADIO DIFFUSION (BROADCASTING)

A new article (11 bis) provides that "The authors of literary and artistic works enjoy the exclusive right to authorize the communication of their works to the public by radio diffusion."

But the countries of the union may by domestic legislation "regulate the conditions for the exercise of this right," such conditions, however, "shall have an effect strictly limited to the country which establishes them," and can not in any case affect the moral right of the author, nor the right of the author to obtain equitable remuneration, which may be fixed by competent authority in default of an amicable agreement.

Court decisions in the United States have sustained this right so far as composers of

music are concerned.* It is possible that dramatists may be held to enjoy this right for their dramas. The Convention gives it for all classes of works

The stipulations of the Convention apply to the public representation of dramatic and dramatico-musical works, including translations of such works, and to the public performance of musical works, whether such works are published or not, and without any obligation to prohibit such use. (art. 11).

MECHANICAL REPRODUCTION OF MUSIC

Authors of musical works have the exclusive right to authorize the adaptation of their works to instruments serving to reproduce them mechanically, or to authorize public performance of the music by means of these instruments. (art. 13). It is provided, however, that the limitations and conditions relative to the application of this article in each country shall be determined by the domestic legislation of that country in its own case. It is further stipulated that the provisions of paragraph 1 of article 13, shall have no retroactive effect, and hence are not applicable to works which in any country of the Union shall have been lawfully adapted to mechanical instruments before the date of such country's accession to the Union. But adaptations made by virtue of paragraphs 2 and 3 of article 13, and "imported, without the authorization of the parties interested, into a country where they would not be lawful, may be seized there."

REPRODUCTION BY CINEMATOGRAPH

Authors of literary, scientific or artistic works have the exclusive right to authorize the reproduction, the adaptation and the public representation of their works by means of the cinematograph. (art. 14).

Cinematographic productions or reproductions by an analogous process are declared to be protected as literary or artistic works "when the author shall have given to the work an original character." If this

character is lacking the production enjoys the same protection as photographic works.

MISCELLANEOUS PROVISIONS OF THE CONVENTION OF 1928

Literary, scientific, or artistic works published in newspapers or periodicals of one of the countries of the Union, may not be reproduced in the other countries without the consent of the authors (art. 9), but articles of current economic, political, or religious discussion may be reproduced, if their reproduction is not expressly reserved. The protection accorded by the convention does not apply to news of the day or to miscellaneous news having the character merely of press information. (art. 9).

Among unlawful reproductions are especially included indirect, unauthorized appropriations of a literary or artistic work such as adaptations, arrangements of music, transformations of a romance or novel or of a poem into a theatrical piece and vice-versa, etc., when they do not present the character of a new, original work. (art. 12).

In order that authors of works protected by the Convention may be considered as such and admitted to proceed against infringers in court "it is sufficient that the author's name be indicated upon the work in the usual manner" and "For anonymous or pseudonymous works, the publisher whose name is indicated upon the work is entitled to protect the rights of the author. He is without other proofs considered the legal representative of the anonymous or pseudonymous author." (art. 15, par. 2).

Infringing works may be seized in conformity with the domestic legislation in countries where the original work is protected, even when they come from a country where the work has not been protected or where the copyright has terminated (art. 16).

Competent authority in each of the countries of the Union may exercise the right to permit, to supervise, or to forbid, by means of legislation or of domestic police, the circulation, the representation, or the exhibition of every work or production.

The domestic legislation of each country may exempt from the copyright protection

*Witmark v. Bamberger Co. 29 Fed. Rep. 776 (1923); Remick v. American Automobile Accessories Co. 5 Fed. Rep. (2d series) 411 (1926); Remick v. General Electric Co. 16 Fed. Rep. (2d series) 829 (1926); Buck v. Jewell-LaSalle Realty Co. 282 U.S. Rep. 501 (1931).

political discourses or discourses pronounced in judicial debates, or may enact the conditions under which lectures, addresses, sermons and other works of like nature may be reproduced by the press; but the author alone shall have the right to bring such works together in a compilation. (art. 2 bis.)

The convention does not prevent the enactment by the legislature of a country of the Union of more favorable provisions in favor of foreigners in general (art. 19), and the governments of Union countries may make or maintain existing treaties conferring upon authors more extended rights, or containing other stipulations not conflicting with the convention. (art. 20).

The right of borrowing lawfully from literary or artistic works for use in publications intended for instruction or having a scientific character or for chrestomathies is provided for. (art. 10.)

CONVENTION RESERVATIONS

At the copyright hearings much was said concerning the desirability of adhering to the copyright convention *with reservations*, and there was insistence that loss would be suffered by the United States unless certain reservations were permitted. One objector at the Senate hearings declared that the first objection to entry into the copyright union was that "If we join now we must do so without reservations of any kind"; that we would "probably be the only country that will do so," and therefore "we will go into the convention without equal privileges with other countries."

That was an erroneous and misleading statement; for while the convention (art. 27, par. 2) permits countries of the union "to retain the benefits of the reservations which they have previously formulated," it is a fact that several countries which adhered to the 1908 convention with reservations have now acceded to the 1928 convention without reservations. Including (as reported in *Le Droit d'Auteur* for January 15, 1934) Great Britain, Italy, Netherlands, Norway, Sweden, Finland and India. Denmark also acceded to the 1928 convention without reservations of any sort. The trend is to accept the 1928 treaty without

reserves and it is in any event only with regard to a few subjects that reservations have been retained—Formalities (one country Siam), translations (eight countries) reprints from newspapers and magazines (Ten countries) and retroactive protection (Four countries).

It is moreover understood that the United States after adherence may impose on such union countries as have retained reservations, corresponding conditions and limitations with respect to the copyright protection enjoyed by nationals of such countries in the United States under the convention.

Moreover it should not be overlooked that the convention of 1928 provides that rights which it accords may be qualified, regulated and applied in accordance with the requirements of the domestic laws of the various union countries.

COPYRIGHT RETROACTIVITY

There are two requirements of the convention that seem to many persons to present exceptional difficulties. One of these is the obligatory extension of copyright protection in the United States to all foreign works still protected abroad. Article 18 of the convention provides that:

(1) "The present Convention applies to all works which, at the time it goes into effect, have not fallen into the public domain of their country of origin because of the expiration of the term of protection."

This provision is stated to apply equally in the case of new accessions to the Union. These provisions are the same as article 18 of the Berlin Convention of 1908, it being declared, in addition, that they apply also "in the event of the term of protection being extended" to the Convention term of life of the author plus fifty years, "or by abandonment of reservations."

It is therefore clear that when the United States does adhere to the Convention of Rome, from that date copyright protection accrues to every work previously published by authors of all countries within the Copyright Union if protection has not expired in the country of its origin. It is to be borne in mind, however, in this connection, that

many thousands of such works are already under protection of United States copyright,—works which have been deposited and registered in the Copyright Office under the reciprocal-copyright relations established under the Copyrights Acts of 1891 and 1909 in behalf of the long list of countries enumerated in earlier pages of this article.

Adherence to the convention does not, therefore, necessarily imply any greatly increased activity with relation to alien authors with respect to copyright in books published prior to the date upon which adherence becomes effective.

But it should frankly be admitted and acknowledged that in common honesty we should from that date respect the literary and artistic property right of every alien author of all countries within the copyright Union.

Fears have been expressed that litigation would follow adherence in cases where unprotected English books had been previously reprinted without authorization. But the convention provides for safeguarding publishers in the case of such books. Article 18 of the convention declares that this principle of retroactive protection "will be applied in accordance with the stipulations to that effect contained in the special conventions either existing or to be concluded between countries of the Union, and in default of such stipulations, its application will be regulated by each country "in its own case," that is, by domestic legislation.

This has already been attempted in various copyright bills that have proposed our entry into the copyright union. The Vestal bill (71st Congress, 2d Session—H.R. 12549) contained a carefully worded *proviso* to safeguard Americans who previous to the date of adherence had reproduced foreign books, reading as follows in part:

"and the author or other owner of such copyright or person claiming under him shall not be entitled to bring action against any person who has prior to such date taken any action in connection with the exploitation, production, reproduction, circulation, or performance (in a manner which at the time was not unlawful) of any such work whereby he has incurred any substantial expenditure or liability."

This provision was incorporated in full in the Senate bill S 1928 of the 73rd Congress, 1st session.

ELIMINATION OF FORMALITIES

The second special provision feared is that which sets up copyright protection for every work from the time of its creation without requirement of any special action. Article 4 of the convention provides that the enjoyment and the exercise of the rights accorded by its provisions "are not subject to any formality."

Our copyright laws in force, require (a) publication with notice of copyright; (b) deposit of copies of the work in the Library of Congress, and (c) registration of a claim of copyright in the Copyright Office. But under the convention alien authors, who are citizens of countries within the copyright union, must be released from all such obligations.

The copyright bills proposing the general revision of our copyright laws have recognized this necessity and have released alien authors from compliance, but have in some cases proposed voluntary deposit or registration of title, or have tried to force the registration of the claim to copyright by compelling the recordation of all assignments or other instruments for the transfer of title to the copyright.

It should not be overlooked in relation to this release of alien authors from compliance with the conditions and formalities prescribed by our copyright laws, that upon the entry of the United States into the Copyright Union, American authors are compensated by being released from compliance with all formalities in all foreign countries within the Copyright Union, notwithstanding such conditions and formalities may be imposed on authors who are citizens of those countries by their domestic laws.

AMERICAN MANUFACTURE OF BOOKS

The most burdensome condition—the *manufacture* of the author's book in the United States, imposed by section 15 of the Copyright Act of 1909,—is in full effect, not only with respect to all works by American authors, but in the case of every

book by a British author, and such compliance must be exact and must be sworn to, in order that legal protection may be secured for such book in the United States.

It is the imposition of these formalities and conditions that has prevented the entry of the United States into the Copyright Union since July 1, 1891. They are directly in opposition to paragraph 2 of article 4 of the Convention of Rome, and, obviously, in order to permit of our adherence to that convention, it is necessary to release, at least all foreign authors, who are nationals of any country within the Copyright Union, from compliance with such or any similar conditions.

This limitation upon the right of the author of a literary work to secure legal protection for his intellectual creation should never have been incorporated into our copyright legislation. It has no connection with the principle of copyright. It is an example—the worst possible example—of what could happen during a period employed in developing a tariff structure described as being “in many ways crude and ill-considered” and establishing “protective duties more extreme than had been ventured on in any previous tariff act.”

It is an excrescence in literary-property legislation and should be eradicated from our copyright laws. But this burdensome obligation must at least, from the date upon which the United States enters the Copyright Union, be eliminated so far as concerns alien authors who are nationals of any country which is a member of that Union.

AMERICAN AUTHORS PROTECTED IN UNION COUNTRIES

What has greatly increased the feeling of the inequality and injustice of this burden of American manufacture put upon the British author (which has resulted in the loss of copyright in the United States in the case of more than three fourths of the works of such authors) is the fact that under the provisions of article 6 of the Berne Convention, American authors have been able to secure copyright protection in all the countries of the Copyright Union by

first or simultaneous publication of their works in one of the Union countries; in which country such authors “enjoy the same rights as national authors and in the other countries of the Union the rights accorded by the present convention.”

An American author, since the date upon which the British Copyright Act of 1911 went into effect (July 1, 1912), has been able merely by first or simultaneous publication of his book in England, to obtain copyright for it in all the other countries of the Copyright Union. It is to be noted that it is only *bona fide publication* of the book that is demanded (placing it on sale) and not its printing or binding in the United Kingdom. Since the adoption of the recent Canadian copyright legislation, an American author may also by first publishing *and printing* his book in Canada, thereby obtain protection in all the countries of the Copyright Union.

THREATS OF REPRISAL

There has been a growing feeling that this generosity of treatment possible under the provisions of the Berne Convention, should be curtailed. The 1914 Protocol to the Berne Convention, incorporated in the 1928 treaty of Rome, provides, in article six, that authors of non-union countries who publish their works for the first time in one of the Union countries, enjoy in such country the same rights as national authors, and in the other countries of the Union the rights accorded by the convention; but further provides, in Paragraph 2 of the same article 6, that

“Nevertheless, when a country outside of the Union does not protect in an adequate manner the works of authors within the jurisdiction of one of the countries of the Union, this latter Union country may restrict the protection for the works of authors who are, at the time of the first publication of such works, within the jurisdiction of the non-union country and are not actually domiciled in one of the countries of the Union.”

Paragraph 4 sets out in detail the procedure to be followed in order to apply this authorized restriction of copyright protection.

It is well understood that the United States was in mind when this Protocol was adopted in 1914. The intervention of the great war compelled attention to other more pressing matters and no action resulted. But after the conference at Rome in 1928, and the inclusion of these provisions in the convention then adopted (art. 6); new rumors were heard of a determination to apply pressure in the case of the United States as authorized by the convention; and at long last (the exercise of great patience must be admitted) such action has been taken by Great Britain.

It is known to the friends of copyright that the British Ambassador's note, referred to in the Secretary of State's letter to Senator Pittman cited above, presents a detailed statement to the effect that our so-called reciprocal copyright arrangements do "in fact impose upon British authors a disability to which authors of other countries are not subjected," and that the "prolongation of the present most unsatisfactory and inequitable situation" is resulting in continued pressure, "both in the public press and in Parliament, from authors and other interested parties, for steps to be taken to remedy the legitimate grievances which they feel at the present disparity of treatment," and that failing appropriate action on the part of the United States "such steps could hardly fail to involve the imposition of a requirement of printing in the United Kingdom as a condition of the grant of copyright in published works of United States authors."

LONDON "TIMES" CORRESPONDENCE

There is no question of the existence of wide-spread discontent on this score in England and in the British colonies. Evidence of this was strikingly shown in a letter printed in the London *Times* for August 21, 1934, by Mr. G. Herbert Thring, who is well-known in relation to copyright as the former Secretary of the Society of Authors. Mr. Thring sets out the reasons why the copyright relations between the United States and Great Britain are unsatisfactory and why they urgently require amendment. He emphasizes the fact that the chief difficulty lies in the provisions of

our copyright law which require that an English author's book must be printed (entirely manufactured) within the United States as a condition for securing the rights and remedies granted by our existing legislation.

Being in London at the time, I was requested to respond and my statement was printed in *The Times* of Saturday, September 22, page 8, col. 1. A few paragraphs may be quoted from it to make clear the nature of this threat of reprisal.

"Mr. Thring states that 'the solution of the whole difficulty is simplicity itself,' and to support this statement he explains the provision of the Protocol to the Berne Copyright Convention, adopted in 1914."

"This provision was incorporated as paragraph 2 of article 6 of the Rome Copyright Convention, adopted in 1928. It has never been put into effect against any country. The convention does not indicate the possible character of such retaliatory action. But the language used is cautious. What it proposes is the *restriction* of a protection already accorded, not its *destruction*. It cannot be applied to the works of an author who 'is domiciled in one of the countries of the Union,' and has secured protection therein."

"Mr. Thring, however, is explicit in his proposals—namely, that the English-speaking communities 'or, better still, all the signatory countries' to the Copyright Convention, should refuse to grant copyright to the authors of the United States except upon 'stringent conditions' which if neglected to be carried out should permit the reprinting of the American author's works 'without a licence'. In other words, allow the appropriation of the American author's literary property. It is not believed that the provision in the Rome Convention contemplated any such drastic proceeding. If carried out as proposed it would develop a condition in England parallel to the literary piracy which existed in the United States before the enactment of the law of 1891, which put an end to a practice generally condemned."

THE PRESENT SITUATION:
WHAT CAN NEXT BE DONE?

Congress adjourned *sine die* on June 18, 1934. All the copyright bills not acted upon at that date are therefore no longer before Congress. On the other hand, the Copyright Convention of Rome of 1928 is still in the hands of the Senate Committee on Foreign Relations and may be given consideration by that committee and be taken up for discussion and vote by the Senate at any time after Congress re-assembles on January 3, 1935.

It is not impossible that the Senate may first of all give attention to the treaty, and authorize the President by a two-third vote to proclaim adherence to the Convention of Rome. As has already been indicated that course has been suggested. I have in this article quoted Senator Cutting as regards this proposal.

It is also, however, true that there is fairly general agreement that it is desirable to enact legislation to bring the present copyright laws of the United States into conformity with the articles of the convention. Mr. Cutting's bill was drafted for that purpose with the least change of existing law. It is therefore desirable to briefly indicate its provisions.

SENATOR CUTTING'S BILL, S.1928

The first section of this bill provided: "That copyright throughout the United States and its dependencies shall subsist in the work of alien authors, not domiciled in the United States, by virtue of the adherence of the United States to the Convention of Berne for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Rome on June 2, 1928."

This was substantially the same language used in the Vestal bill passed by the House of Representatives on January 13, 1931, except that the Convention of Rome of 1928 is here substituted for the Convention of Berlin of 1908.

The second section grants copyright without any formalities to authors who are citizens of, or have first published their works in any country of the Union. It reads:

"From and after the date upon which the adherence of the United States to the said convention of 1928 becomes effective, copyright protection shall be accorded without compliance with any conditions or formalities whatever for all works by *such alien authors who are nationals of any country which is a member of the International Copyright Union*, as well as for any work which may be or has been first published in a country which is a member of the said Union."

This leaves the American author only required to comply with the conditions imposed by our domestic law. Retroactive protection is declared by use of the words "any work which may be *or has been* first published in a country which is a member of the said union."

Section 2 contains the proviso of the Vestal bill to safeguard publishers who may have used previously published foreign books not copyrighted in the United States, without any change in phraseology as accepted by the House of Representatives, January 13, 1931.

Section 3 provides for the granting of copyright from and after the creation of their works, in the case of "*all authors entitled thereto*," including thereby American authors, and the same section provides for copyright of works of architecture and choreographic works and pantomines—not now protected in the United States. The bill provides that the present period of protection shall be retained as provided in sections 23 and 24 of the Act of 1909.

The bill, S. 1928, meets every requirement of the convention of 1928. Its various provisions are worded in accordance with provisions of similar intent in previous bills and approved and accepted in such bills, even to the grant of "automatic copyright" to authors "from and after the creation of their work."

But, in addition, the bill proposes two legislative provisions which are required in order to permit the United States to adhere to the Copyright Convention: (a) retroactive copyright protection; (b) protection for "the moral right" of the author, to enable him to control the integrity of his work and "to

object to every deformation, mutilation or other modification of the said work, which may be prejudicial to his honor or to his reputation." To these grants there was much objection. But these provisions are necessary. As concerns retroactive protection for the works of foreign authors who have heretofore been deprived of copyright, it is not only required to enable the United States to enter the Copyright Union, but is merely an act of common justice and honesty, long delayed.

To meet the requirements of the Convention as to radio diffusion and the "moral" right of the author, the bill provides in section 4 that

"The rights granted in section 1 of the said Act of 1909 (U.S.C., title 17) shall include the exclusive right of the author to communicate his work for profit to the public by any system of broadcasting; and the author of any copyrighted work, even after the assignment of the copyright in such work, shall at all times have the right to claim the authorship of his work, and the right to oppose every distortion, mutilation, or other modification of the said work which might be prejudicial to his honor or to his reputation, as well as the right to restrain the publication and/or the performance of the mutilated work."

POSSIBLE COPYRIGHT REVISION

While, however, insisting that the leading copyright consideration, is entry into the Copyright Union, it may reasonably be also declared that it is incumbent on Congress to give consideration to proposals for securing the major reforms of our copyright legislation and such ameliorations as have been abundantly discussed by Congressional committees during the last dozen years, and

also to some extent have been debated both in the House of Representatives and in the Senate.

This would imply the introduction in Congress of a bill for the general revision of our copyright legislation, corresponding to the various bills introduced heretofore by Mr. Vestal and Dr. Sirovich, with provisions to secure accession to the International Copyright Union.

A better and probably a more successful procedure would be to propose as direct amendments of our existing copyright statutes such changes as would secure the most important alterations of our copyright laws that have been suggested and have been substantially agreed upon by the copyright committees of the Senate and House of Representatives. It would mean a less cumbersome and complicated measure, and one omitting several proposals of questionable advantage and some definitely detrimental.

It is a crucial time for copyright. This coming session of Congress must take affirmative action or a detrimental situation will develop which will require a long period of years of effort to remedy. The entry of the United States into the Copyright Union will secure to all American authors, artists, composers and dramatists immediately upon the creation of any of their works, automatically and without any formalities, complete legal protection for such works in each of the forty countries, members of the Union, including protection for their *unpublished* works, a protection not now enjoyed except in Great Britain. American intellectual producers will lose nothing, can lose nothing by this action, which is our declaration of a grant of honest, equitable treatment to foreign authors within our national boundaries.

APPENDIX

CONVENTION CREATING AN INTERNATIONAL UNION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, SIGNED AT BERLIN, NOVEMBER 13, 1908; REVISED, AND SIGNED AT ROME JUNE 2, 1928.

ARTICLE 1.

Union to protect literary and artistic works.

The countries to which the present convention applies are constituted into a Union for the protection of the rights of authors in their literary and artistic works.

ARTICLE 2.

Definition of "literary and artistic works."

(1) The term "literary and artistic works" include all productions in the literary, scientific, and artistic domain, whatever the mode or form of expression, such as: books, pamphlets, and other writings; lectures, addresses, sermons and other works of like nature; dramatic or dramatico-musical works; choreographic works and pantomimes, the stage directions (*mise en scene*) of which are fixed in writing or otherwise; musical compositions with or without words; drawings, paintings; works of architecture and sculpture; engravings and lithographs; illustrations; geographical charts; plans, sketches, and plastic works relating to geography, topography, architecture, or the sciences.

Translation, arrangements, compilations and adaptations protected.

(2) Translations, adaptations, arrangements of music and other reproductions transformed from a literary or artistic work, as well as compilations from different works, are protected as original works without prejudice to the rights of the author of the original work.

Protection pledged.

(3) The countries of the Union are pledged to secure protection in the case of the works mentioned above.

Works of art applied to industry.

(4) Works of art applied to industry are protected so far as the domestic legislation of each country allows.

ARTICLE 2 bis.

Political discourses

(1) The authority is reserved to the domestic legislation of each country of the Union to exclude, partially or wholly, from the protection provided by the preceding Article political discourses or discourses pronounced in judicial debates.

(2) There is also reserved to the domestic legislation of each country of the Union authority to enact the conditions under which such lectures, addresses, sermons and other works of like nature may be reproduced by the press. Nevertheless, the author alone shall have the right to bring such works together in a compilation.

Lectures, etc.

ARTICLE 3.

The present convention applies to photographic works and to works obtained by any process analogous to photography. The countries of the Union are pledged to guarantee protection to such works.

Photographic works to be protected.

ARTICLE 4.

(1) Authors within the jurisdiction of one of the countries of the Union enjoy for their works, whether unpublished or published for the first time in one of the countries of the Union, such rights, in the countries other than the country of origin of the work, as the respective laws now accord or shall hereafter accord to nationals, as well as the rights specially accorded by the present Convention.

Authors to enjoy in countries of the Union the rights granted to natives.

(2) The enjoyment and exercise of such rights are not subject to any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the stipulations of the present Convention, the extent of the protection, as well as the means of redress guaranteed to the author to safeguard his rights, are regulated exclusively according to the legislation of the country where the protection is claimed.

No formalities required.

(3) The following is considered as the country of origin of the work: for unpublished works, the country to which the author belongs; for published works, the country of first publication, and for works published simultaneously in several countries of the Union, the country among them whose

Definition of country of origin.

legislation grants the shortest term of protection. For works published simultaneously in a country outside of the Union and in a country within the Union, it is the latter country which is exclusively considered as the country of origin.

Published works.

(4) By "published works" ("*œuvres publiées*") must be understood, according to the present Convention, works which have been issued ("*œuvres éditées*"). The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art and the construction of a work of architecture do not constitute publication.

ARTICLE 5.

Authors of countries of the Union have same rights as natives of other countries.

Authors within the jurisdiction of one of the countries of the Union who publish their works for the first time in another country of the Union, have in this latter country the same rights as national authors.

ARTICLE 6.

Authors not belonging to countries of the Union also protected if they first publish in a Union country.

(1) Authors not within the jurisdiction of any one of the countries of the Union, who publish their works for the first time in one of the Union countries, enjoy in such Union country the same rights as national authors, and in the other countries of the Union the rights accorded by the present Convention.

Exception. Protection for non-union authors.

(2) Nevertheless, when a country outside of the Union does not protect in an adequate manner the works of authors within the jurisdiction of one of the countries of the Union, this latter Union country may restrict the protection for the works of authors who are, at the time of the first publication of such works, within the jurisdiction of the non-union country and are not actually domiciled in one of the countries of the Union.

Not retroactive.

(3) Any restriction, established by virtue of the preceding paragraph, shall not prejudice the rights which an author may have acquired in a work published in one of the countries of the Union before the putting into effect of this restriction.

Restrictions to be notified to Government of Swiss Confederation.

(4) The countries of the Union which, by virtue of the present article, restrict the protection of the rights of authors,

shall notify the fact to the Government of the Swiss Confederation by a written declaration indicating the countries in whose case protection is restricted, and indicating also the restrictions to which the rights of authors within the jurisdiction of such country are subjected. The Government of the Swiss Confederation shall immediately communicate this fact to all the countries of the Union.

ARTICLE 6 bis.

(1) Independently of the patrimonial rights of the author, and even after the assignment of the said rights, the author retains the right to claim the paternity of the work, as well as the right to object to every deformation, mutilation or other modification of the said work, which may be prejudicial to his honor or to his reputation. Author reserves moral right in work.

(2) It is left to the national legislation of each of the countries of the Union to establish the conditions for the exercise of these rights. The means for safeguarding them shall be regulated by the legislation of the country where protection is claimed. National legislation governs.

ARTICLE 7.

(1) The duration of the protection granted by the present Convention comprises the life of the author and fifty years after his death. Term of protection: Life and 50 years.

(2) In case this period of protection, however, should not be adopted uniformly by all the countries of the Union, its duration shall be regulated by the law of the country where protection is claimed, and it can not exceed the term fixed in the country of origin of the work. The countries of the Union will consequently not be required to apply the provision of the preceding paragraph beyond the extent to which it agrees with their domestic law. If not adopted; laws of country to govern term.

(3) For photographic works and works obtained by a process analogous to photography; for posthumous works; for anonymous, or pseudonymous works, the period of protection is regulated by the law of the country where protection is claimed, but this period may not exceed the term fixed in the country of origin of the work. Term for photographic, posthumous, anonymous, or pseudonymous works.

ARTICLE 7 *bis*.

Term for collaborative works.

(1) The duration of the author's right belonging in common to collaborators in a work is calculated according to the date of the death of the last survivor of the collaborators.

Term in country of origin, if shorter governs.

(2) Persons within the jurisdiction of countries which grant a shorter period of protection than that provided in paragraph 1 can not claim in the other countries of the Union a protection of longer duration.

Date of death of last survivor governs.

(3) In any case the term of protection shall not expire before the death of the last survivor of the collaborators.

ARTICLE 8.

Exclusive right of translation for entire term.

Authors of unpublished works within the jurisdiction of one of the countries of the Union, and authors of works published for the first time in one of these countries, enjoy in the other countries of the Union during the whole term of the right in the original work the exclusive right to make or to authorize the translation of their works.

ARTICLE 9.

Serial novels protected when published in newspapers or periodicals.

(1) Serial stories ("romans-feuilletons") novels and all other works, whether literary, scientific, or artistic, whatever may be their subject, published in newspapers or periodicals of one of the countries of the Union, may not be reproduced in the other countries without the consent of the authors.

Economic, political, and religious discussions.

(2) Articles of current economic, political, or religious discussion may be reproduced by the press if their reproduction is not expressly reserved. But the source must always be clearly indicated; the sanction of this obligation is determined by the legislation of the country where the protection is claimed.

News items not protected.

(3) The protection of the present Convention does not apply to news of the day or to miscellaneous news having the character merely of press information.

ARTICLE 10.

Extracts from literary or artistic works for educational publications.

As concerns the right of borrowing lawfully from literary or artistic works for use in publications intended for instruction or having a scientific character, or for

chrestomathies, the provisions of the legislation of the countries of the Union and of the special treaties existing or to be concluded between them shall govern.

ARTICLE II.

(1) The stipulations of the present Convention apply to the public representation of dramatic or dramatico-musical works and to the public performance of musical works, whether these works are published or not.

Representation of dramatic or dramatico-musical works.

(2) Authors of dramatic or dramatico-musical works are protected, during the term of their copyright in the original work, against the unauthorized public representation of a translation of their works.

Representation of translations of dramatic works.

(3) In order to enjoy the protection of this article, authors in publishing their works are not obliged to prohibit the public representation or public performance of them.

Notice of reservation of performance not required.

ARTICLE 11 *bis*.

(1) The authors of literary and artistic works enjoy the exclusive right to authorize the communication of their works to the public by radio diffusion.

Radio diffusion.

(2) It belongs to the national legislatures of the countries of the Union to regulate the conditions for the exercise of the right declared in the preceding paragraph, but such conditions shall have an effect strictly limited to the country which establishes them. They can not in any case adversely affect the moral right of the author, nor the right, which belongs to the author of obtaining an equitable remuneration fixed, in default of an amicable agreement, by competent authority.

National legislatures govern; moral right of author; equitable remuneration obtainable.

ARTICLE 12.

Among the unlawful reproductions to which the present Convention applies are specially included indirect, unauthorized appropriations of a literary or artistic work, such as adaptations, arrangements of music, transformations of a romance or novel or of a poem into a theatrical piece and vice-versa, etc., when they are only the reproduction of such work in the same form or in another form with non-essential changes, additions or abridgments and without presenting the character of a new, original work.

Adaptations, etc., considered as infringements.

ARTICLE 13.

Adaptations of musical works to mechanical instruments.

Each country to regulate for itself the manner in which article shall apply.

Not retroactive.

Importation of mechanical musical appliances prohibited.

Reproduction by cinematograph.

Cinematographic productions protected.

Cinematographs copy-rightable.

Also any analogous production.

(1) Authors of musical works have the exclusive right to authorize: (1) the adaptation of these works to instruments serving to reproduce them mechanically; (2) the public performance of the same works by means of these instruments.

(2) The limitations and conditions relative to the application of this article shall be determined by the domestic legislation of each country in its own case; but all limitations and conditions of this nature shall have an effect strictly limited to the country which shall have adopted them.

(3) The provisions of paragraph 1 have no retroactive effect, and therefore are not applicable in a country of the Union to works which, in that country, shall have been lawfully adapted to mechanical instruments before the going into force of the Convention signed at Berlin, November 13, 1908; and, in the case of a country which has acceded to the Union since that date, or shall accede to it in the future, then when the works have been adapted to mechanical instruments before the date of its accession.

(4) Adaptations made by virtue of paragraphs 2 and 3 of this article and imported, without the authorization of the parties interested, into a country where they would not be lawful, may be seized there.

ARTICLE 14.

(1) Authors of literary, scientific or artistic works have the exclusive right to authorize the reproduction, the adaptation and the public representation of their works by means of the cinematograph.

(2) Cinematographic productions are protected as literary or artistic works when the author shall have given to the works an original character. If this character is lacking, the cinematographic production enjoys the same protection as photographic works.

(3) Without prejudice to the rights of the author of the work reproduced or adapted, the cinematographic work is protected as an original work.

(4) The preceding provisions apply to the reproduction or production obtained by any other process analogous to that of the cinematograph.

ARTICLE 15.

(1) In order that the authors of the works protected by the present Convention may be considered as such, until proof to the contrary, and admitted in consequence before the courts of the various countries of the Union to proceed against infringers, it is sufficient that the author's name be indicated upon the work in the usual manner.

(2) For anonymous or pseudonymous works, the publisher whose name is indicated upon the work is entitled to protect the rights of the author. He is without other proofs considered the legal representative of the anonymous or pseudonymous author.

ARTICLE 16.

(1) All infringing works may be seized by the competent authorities of the countries of the Union where the original work has a right to legal protection.

(2) Seizure may also be made in these countries of reproductions which come from a country where the copyright in the work has terminated, or where the work has not been protected.

(3) The seizure takes place in conformity with the domestic legislation of each country.

ARTICLE 17.

The provisions of the present Convention may not prejudice in any way the right which belongs to the Government of each of the countries of the Union to permit, to supervise, or to forbid, by means of legislation or of domestic police, the circulation, the representation or the exhibition of every work or production in regard to which competent authority may have to exercise this right.

ARTICLE 18.

(1) The present Convention applies to all works which, at the time it goes into effect, have not fallen into the public domain of their country of origin because of the expiration of the term of protection.

(2) But if a work by reason of the expiration of the term of protection which was previously secured for it has fallen into the public domain of the country where protection is claimed, such work will not be protected anew.

Special Conventions and domestic legislation may govern.

(3) This principle will be applied in accordance with the stipulations to that effect contained in the special Conventions either existing or to be concluded between countries of the Union, and in default of such stipulations, its application will be regulated by each country in its own case.

Provisions of Convention to apply to new accessions.

(4) The preceding provisions apply equally in the case of new accessions to the Union and where the protection would be extended by the application of Article 7 or by the abandonment of reservations.

ARTICLE 19.

More extensive rights may be granted by domestic legislation.

The provisions of the present Convention do not prevent a claim for the application of more favorable provisions which may be enacted by the legislation of a country of the Union in favor of foreigners in general.

ARTICLE 20.

More extensive right may be secured by special treaties.

The governments of the countries of the Union reserve the right to make between themselves special treaties, when these treaties would confer upon authors more extended rights than those accorded by the Union, or when they contain other stipulations not conflicting with the present Convention. The provisions of existing treaties which answer the aforesaid conditions remain in force.

ARTICLE 21.

Bureau of the International Union.

(1) The international office instituted under the name of "Bureau of the International Union for the Protection of Literary and Artistic Works" ("Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques") is maintained.

Under control of Switzerland.

(2) This Bureau is placed under the high authority of the Government of the Swiss Confederation, which controls its organization and supervises its working.

Language of Bureau to be French.

(3) The official language of the Bureau is the French language.

ARTICLE 22.

Duties of International Bureau.

(1) The International Bureau brings together, arranges and publishes information of every kind relating to the protection of the rights of authors in their literary and artistic works. It studies questions of mutual utility interesting to

the Union, and edits, with the aid of documents placed at its disposal by the various administrations, a periodical in the French language, treating questions concerning the purpose of the Union. The governments of the countries of the Union reserve the right to authorize the Bureau by common accord to publish an edition in one or more other languages, in case experience demonstrates the need.

"Le Droit d'Auteur."

(2) The International Bureau must hold itself at all times at the disposal of members of the Union to furnish them, in relation to questions concerning the protection of literary and artistic works, the special information of which they have need.

Will furnish information as to copyright.

(3) The Director of the International Bureau makes an annual report on his administration, which is communicated to all the members of the Union.

Annual report of Director of International Bureau.

ARTICLE 23.

(1) The expenses of the Bureau of the International Union are shared in common by the countries of the Union. Until a new decision, they may not exceed one hundred and twenty thousand Swiss francs per year. This sum may be increased when needful by the unanimous decision of one of the Conferences provided for in Article 24.

Expenses of the International Bureau to be shared by contracting states.

(2) To determine the part of this sum total of expenses to be paid by each of the countries, the countries of the Union and those which later adhere to the Union are divided into six classes each contributing in proportion to a certain number of units to wit:

1st class.....	25 units
2nd class.....	20 units
3d class.....	15 units
4th class.....	10 units
5th class.....	5 units
6th class.....	3 units

(3) These coefficients are multiplied by the number of countries of each class, and the sum of the products thus obtained furnishes the number of units by which the total expense is to be divided. The quotient gives the amount of the unit of expense.

(4) Each country shall declare, at the time of its accession, in which of the above-

mentioned classes it demands to be placed, but it may always ultimately declare that it intends to be placed in another class.

Swiss administration to prepare the budget of the International Bureau, etc.

(5) The Swiss Administration prepares the budget of the Bureau and superintends its expenditures, makes necessary advances and draws up the annual account, which shall be communicated to all the other administrations.

ARTICLE 24.

Revisions of Convention.

(1) The present Convention may be subjected to revision with a view to the introduction of amendments calculated to perfect the system of the Union.

To take place successively in the countries of the Union.

(2) Questions of this nature, as well as those which from other points of view pertain to the development of the Union, are considered in the Conferences which will take place successively in the countries of the Union between the delegates of the said countries. The administration of the country where a Conference is to be held will, with the cooperation of the International Bureau, prepare the business of the same. The Director of the Bureau will attend the meetings of the Conferences and take part in the discussions without a deliberative voice.

Changes require unanimous consent.

(3) No change in the present Convention is valid for the Union except on condition of the unanimous consent of the countries which compose it.

ARTICLE 25.

Accession of other countries.

(1) The countries outside of the Union which assure legal protection of the rights which are the object of the present Convention, may accede to it upon their request.

To be made known by Switzerland.

(2) This accession shall be communicated in writing to the Government of the Swiss Confederation and by the latter to all the others.

May substitute provisions of previous conventions.

(3) The full right of adhesion to all the clauses and admission to all the advantages stipulated in the present Convention are implied by such accession and it will go into effect one month after the sending of the notification by the Government of the Swiss Confederation to the other countries of the Union, unless a later date has been indicated by the adhering country. Nevertheless, such accession may contain an in-

dication that the adhering country intends to substitute, provisionally at least, for Article 8 concerning translations, the provisions of Article 5 of the Convention of the Union of 1886, revised at Paris in 1896, it being of course understood that these provisions relate only to translations into the language or languages of the country.

ARTICLE 26.

(1) Each of the countries of the Union may, at any time, notify in writing the Government of the Swiss Confederation that the present Convention is applicable to all or to part of its colonies, protectorates, territories under mandate or all other territories subject to its sovereignty or to its authority, or all territories under suzerainty, and the Convention shall then apply to all the territories designated in the notification. In default of such notification, the Convention shall not apply to such territories.

Accession may include colonies, protectorates, etc.

(2) Each of the countries of the Union may, at any time, notify in writing the Government of the Swiss Confederation that the present Convention ceases to be applicable to all or to part of the territories which were the object of the notification provided for by the preceding paragraph, and the Convention shall cease to apply in the territories designated in such notification twelve months after receipt of the notification addressed to the Government of the Swiss Confederation.

Abrogation of Convention in name of colonies, etc.

(3) All the notifications made to the Government of the Swiss Confederation, under the provisions of paragraph 1 and 2 of this article, shall be communicated by that Government to all the countries of the Union.

Notifications communicable by the Swiss Government.

ARTICLE 27.

(1) The present Convention shall replace in the relations between the countries of the Union the Convention of Berne of September 9, 1886 and the acts by which it has been successively revised. The acts previously in effect shall remain applicable in the relations with the countries which shall not have ratified the present Convention.

Present Convention to replace Berne Convention and revisional acts.

But reservations may be maintained.

(2) The countries in whose name the present Convention is signed may still retain the benefit of the reservations which they have previously formulated on condition that they make such a declaration at the time of the deposit of the ratifications.

(3) Countries which are actually parties to the Union, but in whose name the present Convention shall not have been signed, may at any time adhere to it. They may in such case benefit by the provisions of the preceding paragraph.

ARTICLE 28.

Conventions to be ratified not later than July 1, 1931.
Date of effect of ratifications.

(1) The present Convention shall be ratified, and the ratifications shall be deposited at Rome not later than July 1, 1931.

(2) It will go into effect between the countries of the Union which have ratified it one month after that date. However, if, before that date, it has been ratified by at least six countries of the Union it will go into effect as between those countries of the Union one month after the deposit of the sixth ratification has been notified to them by the Government of the Swiss Confederation and, for the countries of the Union which shall later ratify, one month after the notification of each such ratification.

Accession of new countries.

(3) Countries that are not within the Union may, until August 1, 1931, enter the Union, by means of adhesion, either to the Convention signed at Berlin November 13, 1908, or to the present Convention. After August 1, 1931, they can adhere only to the present Convention.

ARTICLE 29.

(1) The present Convention shall remain in effect for an indeterminate time, until the expiration of one year from the day when denunciation of it shall have been made.

(2) This denunciation shall be addressed to the Government of the Swiss Confederation. It shall be effective only as regards the country which shall have made it, the Convention remaining in force for the other countries of the Union.

Convention to remain in effect until one year after denunciation.

Withdrawal from the Convention.

ARTICLE 30.

(1) The countries which introduce into their legislation the term of protection of fifty years provided for by Article 7, paragraph 1, of the present Convention, shall make it known to the Government of the Swiss Confederation by a written notification which shall be communicated at once by that Government to all the other countries of the Union.

(2) It shall be the same for such countries as shall renounce any reservations made or maintained by them in virtue of Articles 25 and 27.

Adoption of term of life and 50 years to be notified.

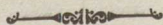
IN TESTIMONY OF WHICH, the respective Plenipotentiaries have signed the present Convention.

Notice shall be given of renunciation of any reservations.

Done at Rome, the second of June, one thousand nine hundred and twenty-eight, in a single copy, which shall be deposited in the archives of the Royal Italian Government. One copy, properly certified, shall be sent through diplomatic channels to each of the countries of the Union.

Signatures.

Date of signing, June 2, 1928.



**INTERNATIONAL CONFERENCE OF ROME FOR THE PROTECTION OF
LITERARY AND ARTISTIC WORKS, MAY 7 - JUNE 2, 1928****RESOLUTIONS PASSED BY THE CONFERENCE****RESOLUTION I**

Resolutions
adopted at
Rome 1928.
English
translations.

The conference considers it to be desirable that the countries of the union should look forward to the possibility of introducing into their respective legislations, if they do not already contain provisions of this sort, regulations to prevent after the death of the author the deformation, mutilation, or other modification of his work prejudicial to the reputation of the author and to the interests of literature, science, and the arts.

RESOLUTION II

The conference considers it to be desirable that each legislation should clearly define the limits of the right of borrowing

RESOLUTION III

The conference considers it to be desirable that the countries of the union which have not yet adopted legislative regulations securing for the benefit of artists an inalienable right to a participation in the receipts due to successive transfers of their original works at public sale should take into consideration the possibility of undertaking the study of such regulations.

RESOLUTION IV

The conference considers it to be desirable that the countries of the union should adopt measures (without imposing any obligatory formality upon authors) which would give them the opportunity of establishing either the date of their literary, artistic, or scientific creations (for example,

by the use of the double-envelope system known as the Soleau envelope) or their status as citizens of one of the countries of the union.

RESOLUTION V

The conference considers it to be desirable that the governments which have participated in the work of the conference should consider the possibility of measures for protecting the rights of performing artists.

RESOLUTION VI

The conference, bearing in mind the identity of general principles and objects of the Convention at Berne, as revised at Berlin and later at Rome, and of the convention signed by the American States at Buenos Aires in 1910 as revised at Habana in February, 1928; and noting the agreement of the majority of the dispositions of the two conventions: Considers it to be desirable, in conformity with the suggestions made by the Brazilian and French delegations, that, on the one hand, the American Republics which have signed a convention to which non-American countries are unable to adhere, may (following the example of Brazil) adhere to the Convention of Berne revised at Rome; and that, on the other hand, all the interested governments may agree among themselves, with a view to preparing a general agreement having as its basis the rules of the two conventions which are similar and as an object the world-wide unification of laws protecting intellectual productions.

Introduced as bill

Dec. 6, 1923, Senate No. 74, Mr. Lodge.

do H. R. No. 2704, Mr. Lampert.

PROPOSED DRAFT OF A BILL TO AMEND THE COPYRIGHT LAW IN ORDER TO PERMIT THE UNITED STATES TO ENTER THE INTERNA- TIONAL COPYRIGHT UNION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to effect and proclaim the adhesion of the United States to the convention creating an international union for the protection of literary and artistic works, known also as the International Copyright Union, signed at Berne, Switzerland, September 9, 1886, and revised at Berlin, Germany, November 13, 1908, and to the "Additional protocol" to the said convention executed at Berne, Switzerland, March 20, 1914.

SEC. 2. That it is hereby declared that the United States desires to be placed in the first class of the countries which are members of the International Copyright Union, as provided in article 23 of the said convention of 1908.

SEC. 3. That the rights and remedies granted by the Act entitled "An Act to amend and consolidate the Acts respecting copyright", approved March 4, 1909, and the Acts amendatory thereof shall be, and are hereby, extended to the authors of works of architecture, and choreographic works and pantomimes, as class (n) and class (o), respectively, in the list of classes of copyright works in section 5 of the said Act; but the copyright of a work of architecture shall cover only its artistic character and design and shall not extend to processes or methods of construction nor shall it prevent the making or publishing of photographs, paintings or other illustrations thereof, and the proprietor of the copyright shall not be entitled to obtain an injunction restraining the construction of an infringing building, or an order for its demolition.

SEC. 4. That on and after the date of the President's proclamation, as provided in section 1 of this Act, foreign authors not domiciled in the United States who are citizens or subjects of any country (other than the United States) which is a member of the International Copyright Union, or authors whose works are first published in and enjoy copyright protection in any country which is a member of the said Union, shall have within the United States the same rights and remedies in regard to their

works which citizens of the United States possess under the copyright laws of the United States, and for the period of copyright prescribed by said laws, including any term of copyright renewal: *Provided, however,* That no right or remedy given pursuant to this Act shall prejudice lawful acts done or rights in copies lawfully made or the continuance of enterprises lawfully undertaken within the United States prior to the date of said proclamation.

SEC. 5. That in the case of works by such authors first produced or published after the date of the said proclamation the copyright protection in the United States shall begin upon such date of first production or publication; and in the case of all of their works, not previously copyrighted in the United States, in which copyright is subsisting in any country of the Copyright Union at the date of said proclamation, the copyright protection in the United States shall begin upon such date; but the duration and termination of the copyright protection in the United States for all works shall be governed by the provisions of sections 23 and 24 of the said Copyright Act of 1909: *Provided, however,* that the duration of copyright in the United States shall not in the case of any foreign work extend beyond the date at which such work has fallen into the public domain in the country of origin.

SEC. 6. That the enjoyment and the exercise by such foreign authors not domiciled in the United States of the rights and remedies accorded by the copyright laws of the United States and the provisions of this Act shall not be subject to the performance of any formalities in order to secure copyright, and such foreign authors shall not be required to comply with the provisions of the copyright laws of the United States as to publication with notice of copyright, deposit of copies, registration of copyright, or manufacture within the limits of the United States.

SEC. 7. That the provisions of section 31 of the said Act of 1909 shall apply to any work by a foreign author only when two copies of such work shall have been deposited after publication and manufacture as required by the said Act of 1909, under an assignment of the United States copyright recorded in the Copyright Office.

SEC. 8. That the Supreme Court of the United States shall prescribe such additional or modified rules and regulations as may be necessary for practice and procedure in any action, suit, or proceeding instituted for infringement of copyright under the provisions of this Act.

Tentative draft for
A BILL to enable the United States to enter the International Copyright Union

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That copyright throughout the United States and its dependencies shall subsist in the work of alien authors not domiciled in the United States who are nationals of any country which is a member of the International Copyright Union, by virtue of the adherence of the United States to the Convention of Berne for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Berlin on November 13, 1908, and at Rome on June 2, 1928.

Sec. 2. From and after the date upon which the adherence of the United States to the said Convention of 1928 becomes effective, copyright protection shall be accorded without formality for works by such alien authors thereafter created, as well as for all works which on such date are protected by copyright in any country which is a member of the International Copyright Union; Provided, That as to copyright in works not previously copyrighted in the United States, no right or remedy given pursuant to this Act shall prejudice lawful acts done or rights in or in connection with copies lawfully made or the continuance of business undertakings or enterprises lawfully undertaken within the United States or any of its dependencies prior to the date on which the adherence of the United States to the said Convention of 1928 became effective; and the author or other owner of such copyright or person claiming under him shall not be entitled to bring action against any person who has prior to such date taken any action in connection with the exploitation, production, reproduction, circulation, or performance (in a manner which at the time was not unlawful) of any such work whereby he has incurred any substantial expenditure or liability.

Sec. 3. Copyright is hereby granted and secured by this Act to all authors entitled thereto from and after the creation of their work, whether published or unpublished, including works of architecture and choreographic works and pantomimes, and the duration and termination of such copyright shall be governed by the provisions of Sections 23 and 24 of the Act of March 4, 1909 (U.S.C., Title 17); Provided, That the duration of copyright in the United States shall not in the case of the work of any alien author extend beyond the date upon which such work has fallen into the public domain in the country of its origin as defined in said Convention of 1928.

Sec. 4. The rights granted in Section 1 of the said Act of 1909, (U.S.C., Title 17) shall include the exclusive right of the author to communicate his work for profit to the public by any system of broadcasting (including television); and the author of any copyrighted work, even after the assignment of the copyright in such work, shall at all times have the right to claim the authorship of his work, and the right to oppose every distortion, mutilation, or other modification of the said work which might be prejudicial to his honor or to his reputation, as well as the right to restrain the publication and/or the performance of the mutilated work.

Sec. 5. The Supreme Court of the United States shall prescribe such additional or modified rules and regulations as may be necessary for practice and procedure in any action, suit, or proceeding instituted for infringement under the provisions of this Act.

Sec. 6. This Act shall take effect from the date of its passage.

Copyright Legislation

Thorvald Solberg, former register of copyrights, and Carl L. Cannon, chairman of the A.L.A. Committee on Book Buying, discussed copyright legislation; the former advocating a new copyright bill fundamentally amended. It should secure to individual book buyers, as well as to libraries, at the very least, the privileges of importation accorded by present legislation. The latter endorsed a new bill based on the Vestal measure without amendment because "after a very careful survey of the whole situation, and interviews with the representatives of a large number of associations interested in the bill, the A.L.A. Book Buying Committee believes that the entrance of the United States into the International Copyright Union is more imperative now than ever before; that American libraries and scholars should give their support to efforts of American authors to improve their status abroad; that American scholars would profit more than they would lose by our entrance into the International Copyright Union because of increased protection for their textbooks sold abroad; that the removal of the restriction on individual importation cannot be effected because of the opposition; and that, finally, the point of individual importation does not equal in importance the issues involved in an act admitting the United States to the International Copyright Union".

Mr. Solberg analysed our early copyright legislation to bring out the fact that it was due to the regrettably illiberal spirit of those early acts and to the specific provision contained in the first Federal copyright act of 1790, permitting the appropriation of works by foreign authors, which led to the disgraceful practice stigmatized as "Our National Sin of Literary Piracy". This continued for a full hundred years. It was not until 1891 that protection in the United States for the works of foreign authors was granted under the Chace Act which went into effect on July 1st of that year. But that act unfortunately brought into our copyright legislation the obligatory manufacture of an author's work in the United States in order to secure copyright protection for it. This uncalled for obligation has burdened and discredited our copyright laws for full forty years. It also brought in its wake the detrimental restrictions on book importation. These it has been the constant endeavor to render more restrictive and burdensome. The recent copyright bill provided that the original copies of the English author's book which had been reprinted and copyrighted in the United States were to be prohibited importation during the entire existence of the copyright - for the life of the author and for fifty years after his death.

The proposal insistently made to secure the exclusion automatically by law of copies of the original book, whenever a reprint has been authorized for another country, is of great interest because it is the one and only aspect of this matter that has all

along troubled the copyright relations between Great Britain and the United States, whereas, so far as I know, no similar proposal has ever been made (with one exception) in other countries.

Section 28 of the recent copyright bill prohibited the importation of all copies of books not manufactured in the United States. The provisions permitting certain exceptions that concern librarians were contained in sub-section (a) which permitted importation of the English original works by certain societies, institutions, libraries, or private persons, "not more than one copy at a time for use and not for sale or hire for profit", under the following circumstances: "provided the proprietor of the United States copyright of such books has, within ten days after written demand, declined or neglected to agree to supply the copy demanded". The librarian or other book buyer, after having waited the prescribed ten days to see if the American reprinter of the foreign book would decline or simply neglect to agree to furnish the foreign copy for him, could then order it directly. He could also do that if he had meantime discovered that up to the date of his order, the American copyright proprietor had neither deposited the required copies of the American reprint, nor registered a claim to copyright in the book.

Fortunately for the interests of libraries, the Department of State submitted, at the copyright hearings on April 30, 1930, a full and careful analysis of the provisions of Section 30 of the bill and recommended that that entire section be stricken out. This document is printed in full in the report of the hearings and librarians will find it informing reading. The provisions as to American manufacture and the prohibition of importation are denounced as "nothing more or less than a rider designed to give protection to American manufacturing industry"; that their chief purpose is "to protect American producers and distributors of books by authors who are nationals of other countries from competition by importations of the same book printed and manufactured in foreign countries"; and that these proposals are "without necessary connection with copyright of with a statute governing copyright".

This frank exposition by the Department of State of the real purpose of obligatory manufacture and the prohibition of importation saved the day so far as libraries are concerned, at least to the extent of leading to a revised provision in the subsequently reported copyright bill, H.R. 12549, according to which the privilege now enjoyed by law, namely to import "not more than one copy of any such work on any one invoice for use and not for sale or hire" is permitted in the case of "any free public library or branch thereof, any privately owned or endowed library open to free use by the public or by scholars".

It is obvious that the arguments and deductions contained in the convincing statement of the Department of State are equally applicable whether the importation of the English author's book is made by a librarian for his library or by an individual book buyer for his personal use.

This is not a matter of copyright. It does not involve any principle of copyright. It is wholly a matter concerning the protection of the profits of the printers and publishers. The theory of the "divided market" or the "divided edition" is only a convenient way of bolstering up the protection desired for the reprinter to insure to him the entire profits resulting from his production of the British author's book "from type set within the limits of the United States". The obligatory double printing of the author's book involves economic waste. There can very rarely be any call for two editions exactly alike of a book in the same language. If the author's work is properly protected by law, as it should be, in every country, copies of his book can be sent to all parts of the reading world at small expense.

To enter the International Copyright Union--which is now generally agreed upon--compliance with all conditions and formalities must be eliminated. The obligatory manufacture of the author's work in the United States as a condition for securing copyright protection is required to be abolished by the articles of the Berne Copyright Convention. It absolutely must be, so far as foreign authors are concerned; it should be done away with entirely to accord with the spirit of the convention.

Another copyright bill will undoubtedly be introduced in the next Congress during this coming winter. The intervening time should be utilized to secure the inclusion in the new copyright measure of desired amendments. It would seem that librarians and, more especially the American Library Association, may properly advocate vital copyright reform and owe it to the library profession to see to it that proper efforts are made to retain for other book-lovers as well as for themselves at least the privileges now accorded by present legislation, and that these are not minimized or restricted.

Copyright Resolutions Adopted at A.L.A. Conference

WHEREAS it is the province of copyright legislation to secure to authors legal protection for their works, and WHEREAS no principle of copyright requires or justifies--as a condition for securing such protection--the obligatory manufacture of an author's work within the United States, or justifies restriction of the importation into the United States of copies of the foreign author's own, authorized edition of his work, and WHEREAS it is generally admitted that the United States should join with other countries of the world in attempting to secure world-wide and uniform protection for literary and artistic property--

THEREFORE we, the American Library Institute and the Council of the American Library Association hereby resolve, that Congress be respectfully petitioned to enact suitable legislation:

1. to permit the United States to enter the International Copyright Union by adherence to the Convention for the Protection of Literary and Artistic Works, signed at Rome on June 2, 1928;
2. to abrogate the requirement of obligatory manufacture of the works of authors within the limits of the United States as a condition for obtaining copyright protection, and
3. to abrogate restrictions imposed upon libraries or individual book buyers, to limit or hinder them from the importation for use of copies of the authorized edition of a foreign author's book.

Thorvald Solberg

Correspondent Urges Action On International Convention.

To the Editor of The Post—Sir: Friends of copyright will welcome and will greatly appreciate your recent editorial on the copyright bill. On August 7, 1935, this bill, S. 3047, was passed by the Senate and on August 12 was presented in the House and referred to the Committee on Patents.

Your concise article makes admirably clear that there is linked up with this proposed legislation the long-delayed adherence of the United States to the International Copyright Convention. You suggest that while the House is completing action upon the Duffy copyright bill, the Senate "would do well to repeat its action of last spring when this convention was adopted without a dissenting vote." That action was taken on April 19, 1935; but unfortunately, on April 22, the Senate "reconsidered" that vote at the request of Senator Duffy and the copyright treaty was restored to the executive calendar of the Senate. He has explained that this was done because he had agreed with certain copyright interests that the proposed copyright legislation should first be enacted before the treaty was ratified.

You say that the pending copyright measure "ought to be perfected and made law without delay," and that "as a point of honor, the pending copyright program of treaty and corroborating statute should now be pushed to completion." There are, however, differences of opinion on some of the provisions of the copyright bill and, notwithstanding the several desirable amendments of present law contained in that measure, further material changes will be presented to the House committee.

It should be emphatically stated that the present active discussion, pro and con, of proposed alterations in the texts of our existing copyright laws is of very minor importance compared with the urgent need for the betterment of our present defective international relations. You point out that there is a large and increasing demand all over the world for the creations of our authors, composers and dramatists, while at the same time there is a constant loss of deserved royalties by reason of inadequate protection abroad; and that effective protection can be secured upon adherence to the copyright convention and acquired membership in the Copyright Union.

An even more urgent matter is the need to set right our present, long-continued, unsatisfactory copyright relations with Great Britain. Our own authors' rights are well safeguarded in the United Kingdom. In the case of their unpublished works, "in like manner as if the authors had been British subjects," And if there is publication of their works in England, when this is simultaneous with, or not over 14 days after publication in our country. And this publication means only the placing of copies of the work for sale in England and does not involve the need to print or manufacture there.

On the other hand, we have been since July 1, 1891, unjust to English authors; have unfairly discriminated against their books to their serious money loss and, as well, to the detriment of their literary reputation.

Our adherence to the convention would remedy this grievous wrong and rectify this discreditable situation. Nothing relating to copyright is so important or so urgent as this at this time. Amend the copyright law if possible, but whatever may be the fate of such proposals, the supremely important matter is adherence to the copyright treaty and membership in the Copyright Union. THORVALD SOLBERG.

Washington.

Sunday, January 12, 1936.

THE COPYRIGHT SITUATION.

Course and Difficulties of the Legislation in Congress.

To the Editor of The New York Times:

When the Seventy-fourth Congress met, the Senate Committee on Foreign Relations had before it for its consideration the International Copyright Convention of 1928, which had been transmitted by the President on Feb. 19, 1934, with the request that the advice and consent of the Senate to adherence thereto should be accorded.

Public hearings were held by the above committee and a subcommittee on March 28, May 28 and 29, 1934, and the testimony heard was printed. Conferences were subsequently held, at the request of the committee, by an interdepartmental group composed of representatives from the Department of State, the Department of Commerce and the Copyright Office, for the purpose of preparing a bill which would prepare the way for the approval of the treaty and to achieve certain greatly desired reforms in the Copyright Law in force.

A tentative draft for a bill was submitted to the Foreign Relations Committee, together with a detailed report. This "draft bill," upon instructions from the committee, was laid before all of the interests which had been represented at the copyright hearings in 1934. The resulting suggestions were carefully studied and a bill was formulated and introduced on April 1, 1935, by F. Ryan Duffy of the Foreign Relations Committee, was printed as Bill S. 2465, and referred to the Senate Committee on Patents.

New Bill Submitted.

This committee granted no public hearings on the bill, but held conferences with those interests which pronounced themselves opposed to it as originally introduced, gave consideration to the suggestions received and, after making many changes which were incorporated, submitted a new bill (S. 3047) on June 14, together with a report (Senate No. 896) recommending the enactment of the bill.

Meantime the Committee on Foreign Relations had given consideration to the copyright convention in the light of the legislation prepared to accompany the treaty and it was decided to report the convention favorably, "in order that it might be considered with the Copyright Bill and that the advice and consent of the Senate to adhere to it might be accorded at the appropriate time."

Senator Duffy thereupon submitted Executive Report No. 4, on Thursday, April 18, 1935. It contained a full detailed summary of the matter under consideration and the full text of the treaty, including all of the signatures. The Senator announced at the time that "this convention involves the copyright situation, and there has been proposed and is now pending before the Patents Committee legislation on the subject that we expect will have been considered before this matter shall be taken up. That is the understanding and agreement of the various conflicting interests with reference to this particular convention."

Senate Manoeuvrings.

The report contains the further explanation:

"The program of adherence at this time, together with the enactment of the accompanying legislation, is a step appropriate not only for the fulfillment of present needs but in preparation for the future; for there is every reason to believe that these needs will become progressively more urgent." Without objection Senator Duffy's report was received and was placed on the executive calendar.

Next day, however, Friday, April 19, Senator Key Pittman, chairman of the Committee on Foreign Relations, brought up the convention in the Senate "as in committee of the whole" and a Resolution of Ratification was read and agreed to by a two-thirds vote without any recorded discussion. But on Monday, April 22, Mr. Duffy asked unanimous consent that this vote should be reconsidered. Senator Pittman declared that he concurred in the request and, there being no objection, the vote was declared reconsidered and the convention was restored to the executive calendar. No explanation was offered at the time of this unexpected and disheartening procedure; but the paragraphs I have quoted above indicate why it was done and what was supposed to justify it.

On Tuesday, June 25, the bill S. 3047 was announced as "next in order," but requests that it "go over" from Senators Wagner and Copeland prevented debate, although Senators McAdoo and Duffy were permitted to make explanations regarding the bill. On Monday, July 29, the bill was again reached on the calendar, but upon the demand of Senator Ashurst it was again "passed over," and on Wednesday, July 31, it was debated in the Senate for more than an hour.

Objections Submitted.

It is known that objections to the enactment of the bill have been submitted, but so far as these have been printed they have not been specific but have consisted of general condemnation not supported by statements of facts. One charge, however, several times repeated is that "the bill gives foreign authors basic copyright without formality, but denies it to American authors." This statement is left without explanation, but is meant to imply that a great injustice to our own authors would result. The facts briefly presented will greatly minimize the discrepancy alleged.

The Berne Copyright Convention, to which the bill proposes adherence, declares that the enjoyment and exercise of the rights granted "are not subject to any formality." We must therefore free authors who are nationals of countries which are members of the Copyright Union from compliance with any formalities. In return, American authors reciprocally secure copyright protection without formalities in more than forty countries within that union. An exchange greatly to the advantage of our own authors.

The bill does not propose so-called "automatic copyright" for the works of our authors. It proposes no change in existing law which requires deposit and

registration for unpublished works, and for works given to the public, the preliminary steps of publication with copyright notice and American manufacture. But our authors are neither asked to do anything more than heretofore nor anything different. They are simply left to continue a long-time practice, which authors generally would consider to their material advantage.

The bill extends to American authors many of the most important copyright reforms discussed during the last ten years. One of the more valuable of these is securing exclusively to the author of the copyright work the basic right to copyright it and to prevent his loss of this right because of first publication in periodicals, a thing which now frequently occurs; also the right to object to every deformation, mutilation or other modification of his work which may be prejudicial to his honor or to his reputation. The author secures the important advantage of the legal divisibility of his copyright (of great practical service); protection for his unpublished works, not heretofore copyrightable; the exclusive right of radio broadcasting; a new single term of fifty-six years of protection in lieu of our present treacherous double term; safeguarding against loss of copyright because of technical errors, and authority to correct entries incorrectly made.

Authors Asked to Help.

The bill provides better remedies for infringement of the author's rights; larger damages (up to \$20,000, instead of \$5,000, without requiring proof of actual injury); award of the infringer's profits; injunction against the consummation or repetition of an infringement. The present requirement of minimum statutory damages of \$250 in all cases is abrogated, but, up to the maximum amount, statutory damages are permitted "such as shall in the opinion of the court be just, proper and adequate in view of the circumstances," and such as shall put a stop to infringement. Injunctive relief is limited when the defendant has been proved ignorant of the fact that he was infringing.

Authors will do well to rally to the support of this bill, because it is obvious that they would secure through its enactment definite new rights and would not lose any rights that are practically valuable, and in addition would obtain the very greatest advance for their primary benefit now possible—the entrance of the United States into the International Copyright Union.

THORVALD SOLBERG.

Washington, D. C., July 31, 1935.

Cosmos Club, Washington, Jan. 17, 1936.

This reform advocated by the friends of copyright is felt to be of vital importance at this time. If you are willing to support our efforts, please write promptly to Members and Senators from your State or to your personal friends in Congress and urge early and favorable action.

Also please send a special ^{letter} to Dr. W^m J. Sirovich, Chairman of the Committee on Patents of the House of Representatives, requesting that the Copyright Bill, S. 3047, which passed the Senate on August 7, 1935, and has been referred to that House committee, be given early consideration and that any necessary action by the Committee on Patents be promptly taken and that the bill be favorably reported to the House of Representatives.

Sincerely yours
Thorvald Solberg.

AUTHORS SHOULD INSIST UPON THE ENACTMENT OF THE
COPYRIGHT BILL (S. 3047) NOW.

American authors have at the present time an opportunity to secure a greater measure of direct legislative benefit than has been possible since 1909.

1. They can induce Congress to enact the Copyright Bill, S. 3047, and obtain new and valuable rights.

2. They can secure the ratification of the Copyright Convention of Rome (1928) and thus secure the entry of the United States into the Copyright Union, securing thereby protection without formality ("automatic copyright") in more than forty countries and many colonies and protectorates.

S. 3047 is the most practical and most carefully prepared copyright bill that has been presented to Congress since 1925. It accords to authors (besides the wide area of new international protection) a great many of the most important reforms for their benefit urged upon Congress for the last dozen years. It is not my purpose to enumerate these; any author can discover them for himself. But in response to two specific criticisms I will state:

1. There is no grant of privilege to foreign countries without providing corresponding privileges for American authors. The American author gets protection in foreign countries and the foreign author gets protection here. American authors continue the procedure of registration and notice practiced for more than half a century and secure the practical benefits resulting. Foreign authors are definitely encouraged to register their works at the Copyright Office.

2. There is no unfair advantage for the users as opposed to the creators of copyrighted works. The remedies against infringement are ample and represent an adjustment to the needs of the present time in the light of experience under previous statutes. Authors have no reason for fear. The bill affords them as full protection as the present law.

If you agree, please write or telegraph to urge favorable action upon the pending bill, S. 3047, addressing Senator William G. McAdoo, Chairman of the Committee on Patents of the Senate, Senator F. Ryan Duffy, author of the bill, and the Senators from your state.

Thorvald Solberg,
United States Register of Copyrights for
Thirty-three Years.

REVISION OF COPYRIGHT LAWS

EXTRACT FROM HEARINGS
BEFORE THE
COMMITTEE ON PATENTS OF THE
HOUSE OF REPRESENTATIVES
ON
FRIDAY, APRIL 3, 1936

STATEMENT BY
THORVALD SOLBERG
(Former Register of Copyrights, 1897-1930)
AT THE HEARING ON THE COPYRIGHT BILL—S. 3047
SEVENTY-FOURTH CONGRESS
FIRST SESSION



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1936

COPYRIGHT STATEMENT

STATEMENT OF THORVALD SOLBERG, FORMER REGISTER OF COPYRIGHTS

Mr. SOLBERG. Mr. Chairman and gentlemen of the committee: I wish to make an appeal on behalf of the creators of intellectual productions—authors, artists, composers, and dramatists. I have no affiliation whatever with any group of interests representing the users of literary property. While it is admitted that regard must be had to the rights or, perhaps more correctly stated, the needs of the producers of the authors' works, we should never lose a realization of the fundamental fact that it is the intellectual creator who is first entitled to be considered and his rights are first of all to be safeguarded.

Some 50 years ago, one of America's outstanding teachers, Prof. Nathaniel Shaler, of Harvard University, published his "Thoughts on the Nature of Intellectual Property." He made a strong plea for the sacredness of an author's right with respect to his created work. I will quote a few paragraphs of his clear analysis for the assured pleasure of this committee. He said in part:

When we come to weigh the rights of the several sorts of property which can be held by man, and in this judgment take into consideration only the absolute question of justice, leaving out the limitations of expediency and prejudice, it will be clearly seen that intellectual property is, after all, the only absolute possession in the world. * * * The man who brings out of nothingness some child of his thought has rights therein which cannot belong to any other sort of property. * * * The inventor of a book or other contrivance of thought holds his property, as a god holds it, by right of creation.

So the restrictions which we may cast around the property of intellect must be made with the confession of the rightfulness of that property. They must be made with the acceptance of the proposition that it has the same sanctities as other human interests and that society is as much interested in maintaining its bounds as it is in protecting ancestral acres, or the other well-accepted forms of property.

Intellectual property has been slowly growing into recognition in our laws for some centuries past, and this development of legal protection has been followed by an enormous increase in the proportion of human endeavor that has been given to the work of improving the physical and mental condition of man. * * * Whatever tends to lower the protection given to intellectual property is so much taken from the forces which have been active in securing the advances of society during the last centuries.

Gentlemen, for more than a hundred years we have, to repeat Professor Shaler's words, "cast restrictions around the property of intellect", and for more than 40 years our copyright legislation has failed to take into consideration "only the absolute question of justice", and has persistently applied the "limitations of expediency and prejudice", with the result that as regards international copyright the United States occupies an undignified and criticized position.

We have, since 1790, the date of our first Federal Copyright Act, grown in national intelligence sufficiently to recognize that a foreign author is entitled to the legal protection of his book in the United States; but we are still so dominated by "limitations of expediency and prejudice" that we compel him to print it in our own country before that protection is actually granted to him.

There are now before this committee two distinct but related proposals: (1) The determination of whether the United States is to become a member country of the International Copyright Union; (2) to further determine what proffered amendments of our existing copyright law shall be accepted, approved, and recommended to Congress for enactment.

There is one dominant consideration with respect to the present copyright situation to which the attention of the members of this committee should be directed; that is, the fact that the present supremely important copyright matter is to secure the adherence of the United States to the International Copyright Convention and thus become a member country in the International Copyright Union.

This union is formed by the voluntary association of more than 40 countries of the world, under adherence to the copyright treaty on which the union is founded, in order that they may participate in the benefits secured to authors by the steady and persistent endeavor, from year to year, to work out more uniform copyright laws in all of these countries and to incorporate into such laws every reasonable improvement of the conditions of the author with respect to the adequate protection of his rights in his created works. Is it reasonably conceivable that the result—the International Copyright Convention of Rome of 1928—is not the most advanced and most perfect instrument for reciprocal world security for the works of authors? It would seem superfluous to give any extensive explanation concerning the Copyright Union at this late day—it has existed since 1887—but in view of what has been declaimed here within the last few days, I wish to make a brief exposition of the purposes and provisions of the union, so as to prevent possible erroneous deductions, and, incidentally, to correct some definite errors of statement.

The first fundamental purpose of the Copyright Union is the formulation of what may conveniently be termed a universal copyright code; the aim being to establish throughout the world a recognized measure for obtaining, by legislative enactments or treaty agreements, for authors, artists, composers, and dramatists, at least the minimum protection for the exclusive rights which should be accorded to them. This minimum protection formulated in the copyright convention is insisted upon. Every adhering country pledges itself to grant in its domestic legislation at least such minimum rights when it ratifies the treaty; but there is left to each country the privilege of enacting more liberal copyright legislation if it sees fit so to do, or the member countries of the union may, by treaties between themselves, agree upon "more extended rights than those accorded by the union." All countries which assure such minimum legal protection for the rights of authors may accede to the copyright convention upon their own request.

The further, second purpose, of the Copyright Union is to secure to intellectual creators, whatsoever their nationality be, wherever they may be resident, in all the other countries within the Copyright

Union all the rights accorded to authors and all the remedies provided for the protection of such rights by the domestic legislation of each and all of those countries. The convention, in article IV, clearly defines this reciprocal protection. It declares that authors who are nationals of one of the countries of the union shall enjoy for their works * * * such rights in the other countries of the union as the respective laws now accord or shall hereafter accord to their own nationals; that is to say, that the extent of the protection, as well as the means of redress to safeguard the author's rights, are regulated exclusively by the copyright legislation of each country where the protection is claimed.

I wish to point out just here that it is upon a substantially parallel basis that our present international copyright relations are established. The Copyright Act of 1909, our present law, provides that copyrights secured by that act may be extended to an alien author—when the foreign state or nation of which such author is a citizen or subject grants * * * to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this act or by treaty.

It is well to remember this parallel when you hear witnesses declaring their entire satisfaction with the numerous copyright agreements between the United States and many foreign countries while, at the same time, they express strenuously their objection to adherence to the general Copyright Treaty.

There are more than 40 countries of the world with which such copyright relations have been set up by means of presidential proclamations. In each and all of them, American authors receive such copyright rights and remedies as are extended in each country to its own nationals under domestic laws, but only then upon due compliance with any conditions and formalities prescribed in the domestic copyright law of each country. If, however, the United States adheres to the Copyright Treaty, this protection is accorded to American authors automatically, that is, without the necessity of complying with any formalities prescribed in the domestic laws of each member country.

The Copyright Convention is an agreement between the countries concerned. When we adhere, we obligate ourselves to accept the stipulations of the agreement. They are set out plainly in the articles of the convention. We are at liberty—nay, in good sense we are obligated—to read and consider them before we formally agree to them by ratification of the treaty. This agreement is three-fold, (1) we are bound to accord to the authors of every other country in the union the rights and remedies which our own laws accord to our own authors; (2) we are obligated to accord at least the minimum rights and remedies enumerated in the International Copyright Code to our own nationals and to the nationals of member countries; and (3) we will receive in all other countries “the rights specially accorded by the present convention”, and, reciprocally, we must extend such rights to nationals of the other countries. These rights are specific and in every instance it is provided that the domestic law of each country shall determine how such rights are to be applied.

The United States may retire from the union at will, upon giving a year's notice. While it remains a member, it has the privilege, as does each member country, to participate in any and all conferences of revision and to discuss and vote upon any changes proposed in the articles of agreement. The following declaration should be accentuated. Article IV of the Document of Agreement, the convention, expressly provides that—

no alteration in the present convention shall be binding on the union except by the unanimous consent of the countries which compose it.

No change in the text to which the United States has agreed can be made without the consent of the United States.

I will briefly summarize the provisions of the convention which require changes in our copyright legislation in order to permit us to enter into the Copyright Union.

The literary and artistic works that are protected are enumerated. To this list we must add in our proposed enabling act the following: (1) choreographic works and pantomimes; (2) works of architecture, or models or designs of architectural works; (3) works prepared expressly for radio broadcasting, and (4) works of art applied to industry.

To the *exclusive rights* of the author, beyond what our present copyright laws accord, the convention extends the following new rights included in the provisions of the bill S. 3047:

1. To communicate the copyrighted work to the public by radio broadcasting, radio facsimile, wired radio, telephony, television, or other means of transmission (sec. 1 (f), p. 4);

2. That—

independently of the copyright in any work * * * and even after assignment thereof, the author retains the right to claim the authorship of the work as well as the right to oppose every deformation, mutilation, or other modification of the said work which may be prejudicial to his honor or to his reputation (art. VI);

3. There is proposed a convention term of copyright protection comprising the life of the author and 50 years after his death (art. VII), but it is declared that, if this term is not adopted uniformly by all the countries, then the duration of copyright "shall be regulated by the law of the country where protection is claimed", and need never exceed in the United States the term fixed in the country of origin of the work;

4. The provisions of the convention are declared—

to apply to all works which at the time it goes into effect have not fallen into the public domain of their country of origin because of the expiration of the term of protection (art. XVIII).

This takes out of the public domain in the United States all foreign works in which copyright is subsisting; but, under the terms of the convention, the bill carefully safeguards persons who have previously used foreign works against threat of litigation because of such use.

5. The enjoyment and the exercise of all rights accorded by the convention are declared "not subject to any formality."

I only have attempted to indicate the principal matters dealt with. There are many excellent provisions concerning minor benefits and it should be noted how frequently, following such provisions, it is

declared that their application is to be governed by the domestic legislation of each country.

I now wish to touch upon the matter of our entrance into the International Copyright Union.

This copyright union was founded in 1887, but even now, nearly 50 years later, the United States has not achieved membership. Except perhaps in the case of new members of this committee, this question of admission to the copyright union is not new, but has been a familiar topic for discussion in the House and Senate committees on patents. Especially is this true in the decade of years since 1925, when the bill, H. R. 11258 of the Sixty-eighth Congress was introduced by Mr. Perkins on January 2 of that year. That bill extended copyright in the United States to all authors who were citizens or subjects of any country within the International Copyright Union. A number of bills followed, most of them containing the same or similar proposals. One, the Vestal bill, H. R. 12549, of the Seventy-first Congress, was passed by the House of Representatives on January 13, 1931. It was considered by the Senate Committee on Patents and, after public hearings and the incorporation of many amendments, was favorably reported by that committee with provisions to permit adherence to the copyright treaty.

This was followed, on December 15, 1933, by the presentation of a petition addressed to the Secretary of State pointing out "The discreditable position occupied by the United States with reference to international copyright"; that "under our law, an author has no redress for piracy, if the language of his work is English and the manufacture foreign"; that "This constitutes a standing affront to friendly powers and cannot be defended on moral grounds."

The petition declared that "adherence to the convention would at once meet the demands of honor, improve international relations and be a boon to American authorship. It would take high rank in copyright annals and such a course is earnestly recommended." This document was signed by the presidents of 12 of our leading universities—Harvard, Columbia, Princeton, Johns Hopkins, Yale; the State Universities of California, Iowa, Minnesota, North Carolina, Texas, and Wisconsin, and the University of Chicago. In the petition, the President was requested to transmit the convention to the Senate. He did so on February 19, 1934, and it was referred to the Committee on Foreign Relations. The convention has been favorably reported by that committee, is now on the Executive Calendar of the Senate and awaits a final vote there when the copyright bill has been enacted.

The Foreign Relations Committee, in turn, held hearings in 1934 and testimony was recorded favoring adherence to the copyright treaty because of the advantages securable to American authors by so doing. Telegrams approving adherence were received from the president and from the manager of the American Society of Composers, Authors, and Publishers and also one, of especial significance, from Mr. Marc Connelly, president of the Authors' League of America, declaring that the League "heartily endorses the adherence of the United States to the International Convention of the Copyright Union as revised and signed at Rome on June 2, 1928."

I have referred only to the petition from 12 of our great universities, but it should be stated that practically every university and

every college and every institution of higher learning in the United States is on record in behalf of their professors and teachers to urge adherence to the Copyright Treaty. The whole educational and cultural contingent of our people included in the membership of our learned societies is recorded in favor of adherence. The following 22 associations are found listed in the reported hearing urging this forward movement: The American Library Association, the American Library Institute, the American Association for the Advancement of Science, the American Anthropological Association, the American Chemical Society, the American Council of Learned Societies, the American Council of Education, the American Philological Society, the American Physical Society, the American Political Science Association, the Society of Church History, the American Sociological Society, the Archaeological Institute of America, the Association of American Colleges, the Association of American Geographers, the Association of Urban Universities, the Geological Society of America, the Linguistic Society of America, the Modern Language Association of America, the National Educational Association, the Society of Biblical Literature, and the American Historical Association.

The very titles of these various associations indicate clearly the character of their members. It is obvious that we have here an expression of the opinion of many groups composed primarily of intellectual creators, the individuals represented being, no doubt, mostly actual or potential authors who are in this way declaring their personal opinion that the United States should take its rightful place with the other countries of the world as a member of this admirable association of nations, now numbering nearly 50 countries in all, pledged to accord reciprocal protection for the rights of the authors of each and all of them.

No question with respect to copyright has been so generally approved as entrance into the Copyright Union. Adherence to the Copyright Convention has been steadily supported by the public press. Many leading journals, among them the New York Nation, the New Republic, the Saturday Review of Literature, World Affairs, have stressed this action and repeated strong editorials have appeared in the New York Times, the Herald Tribune, the Boston Transcript, the Christian Science Monitor, the New York World-Telegram, and the Washington Post, urging this be done now. Many of our Presidents have given expression of sympathetic consideration for such betterment of our international copyright relations, including Arthur, Cleveland, Harrison, Wilson, Theodore Roosevelt, Hoover, and Franklin Delano Roosevelt. On no copyright question has there been such a unanimity of opinion.

I shall take the liberty of quoting two of my friends, namely, Mr. Gene Buck and Mr. C. E. Mills, who gave earnest support to adherence only 2 years ago. Mr. Buck declared that he and Nathan Burkan "are both strongly in favor of the treaty; believe it a tremendous step forward in protection of American creators." Mr. Mills is even more forceful. In his telegram of March 27, 1934, he says in part:

Entry into International Copyright Union of unquestioned tremendous advantage to American arts and letters, through the possibility by that means

of securing practical and effective copyright protection in foreign countries. Subjects the matter of copyright are international in their service to humanity and should not be subject to the same rules as regards policies of isolation as frequently govern in matters of business * * *. The vast majority of the civilized and progressive nations of the world have adhered to the International Copyright Union and policy of the United States in withholding adherence heretofore has, so far as welfare of our nationals is concerned, operated to our disadvantage.

These friends are now in opposition. It is their privilege to change their mind; but I deprecate greatly their doing so. I very much regret the loss of their support. I do not think they have given us good reasons for now failing to help our millions of intellectual producers to secure what I maintain would be for their great and continued benefit.

Several witnesses who at this time object to our entry into the Copyright Union explain that their change of opinion is due to the deplorable conditions prevailing in Germany and Italy. But suppose these two countries were not in the union, would that be a good reason for us to refuse to enter into an advantageous agreement with the remaining forty-odd countries? Would it be a valid reason for refusing to enter that some of the countries now members may presently withdraw? Any country may at will denounce the treaty. It seems probable that Germany may be obligated to withdraw from the union if that country fails to live up to the articles of agreement embraced in the copyright treaty.

The Authors' League of America now withdraws its support for the proposal to enter the Copyright Union, although for 15 full years it is said to have advocated this. It objects now, it is declared, because the bill, S. 3047, is greatly unjust to our own authors, denying to them rights which are extended to foreign authors. This statement is predicated merely upon the fact that foreign authors are released from such conditions and formalities as American manufacture, deposit of copies, registration, and so forth, while our own authors must continue the practice which has been customary for a long time. Nothing is taken away from them and they are granted, in return, reciprocal release from formalities in more than 40 foreign countries in the union.

The available alternative is to release all authors from the conditions and formalities now imposed by our copyright laws. "Automatic copyright", to use a convenient and well-understood term, is not a new proposal. I suggested it in the bill for a general revision of our copyright legislation prepared at the request of the Authors' League and introduced in the House of Representatives by Mr. Perkins, known as H. R. 11258, of the 68th Congress. It was partly accepted in the Vestal bill (H. R. 12549), which, in its first section, declared that copyright is granted "without compliance with any conditions or formalities whatever." But that bill, while it released nationals of foreign countries within the Copyright Union from obligatory American manufacture, extended it to our nationals for "any copyright material in book, pamphlet, map, or sheet form."

In the Senate hearings on the Vestal bill, January 1, 1934, automatic copyright received substantial support, notably from that sane and intelligent friend of copyright, Senator Bronson Cutting. I

will quote here some paragraphs from his address directed to this matter:

Authors believe in automatic copyright because they think it is sound in itself; because other systems have been tried all over the world and in this country and have been found wanting. * * * It was suggested that instead of accepting the European view of the situation held by practically every civilized nation on earth, we should insist upon our terms, which would eliminate the automatic copyright provision. I do not believe that that attitude can be maintained. If the principle is sound, it is no less sound because foreign nations happen to have adopted it before we did. The history of copyright legislation will show that the European nations have always been ahead of this country and that we have lagged behind. * * * They have had more experience than we have had. They have been more progressive in their legislation. And I do not see how this country is in a position to insist upon a backward step as opposed to all the other countries of the world. I think that with their experience, dating back a long time before the adoption of our Constitution, it would be simply inconceivable that any International Convention would go back on the principle of automatic copyright. * * * I just want to state the fundamental point of view that automatic copyright is being proposed, first, for the benefit of our authors; second, for what we conceive to be the benefit of the people of the United States and, third, because in its essential spirit it is a just measure.

At this point I beg leave to submit the following amendments to the bill, S. 3047, and in the existing copyright law [reading]:

- (1) On page 1, strike out lines 3 to 11, inclusive, and substitute the following: That copyright is secured by this act for all the writings of authors, whatever the mode or form of their expression, whether unpublished or published, for the term of copyright protection hereinafter provided. Such copyright shall vest in the author of any such work immediately upon the making of the work and shall not depend upon the accomplishment of any conditions or formalities whatever: *Provided, however,* That for the purposes of preserving evidences of ownership and facilitating transfers of copyright and rights thereunder, any author or his executors, administrators or assigns may obtain registration for such works upon complying with the provisions of this act.
- (2) That section 3 of the bill, page 5, lines 17 to 21, inclusive, be stricken out.
- (3) That section 11 of the bill, page 11, lines 21 to 25, and page 12, lines 1 to 17, inclusive, be stricken out.
- (4) That sections 15, 16, and 17 of the act of March 4, 1909 (U. S. Code, title 17) be repealed.

Gentlemen of the committee, we have now reached the crossroads. We are at this time passing a significant milestone in the history of copyright. It behooves us that we should now show vision and understanding, so that the future of copyright will mean much for the millions of our intellectual producers, authors, artists, dramatists, and composers. I have very inadequately advocated their claims upon your consideration; but I have tried to point out how general is the belief that it would be to their benefit to secure the advancement made possible by the enactment of the Duffy bill, S. 3047, which would obtain for them, not only many important amendments proposed in our present copyright laws but inclusion in the security offered them in foreign countries for their works upon our acquired membership in the Copyright Union. Surely the normal procedure which may now be demanded in their behalf is that the advantage of the affirmative action by the Senate in passing the bill S. 3047 shall not be lost to them but shall be followed by a reasonably prompt report of that bill—amended, perfected, if you so determine, but submitted to the House of Representatives for its consideration and possible enactment.

Some good provisions may be taken over from the bills H. R. 10632 and 11420; even, possibly, from the Vestal bill, H. R. 12549; but that bill cannot now be used as a basis for a new proposal of law. It was a compromise measure urged because it was then the mistaken opinion that we should adhere to the 20-year-old treaty of 1908. If it had been enacted, we would now be working with only international copyright relations with some five or six minor countries—a manifestly absurd position.

Finally, gentlemen, I wish to state as emphatically as possible that if this session of Congress is allowed to come to an end without securing adherence to the Copyright Treaty, it will bring about a copyright catastrophe of such magnitude that it will require half a century of effort to overcome the evil resulting. The convention of 1928 provides that when a country outside of the union does not protect in an adequate manner the works of authors who are nationals of one of the countries of the union, then the latter union country may restrict protection for the works of authors who are nationals of such nonunion country. It is well known that this provision was adopted with the United States in mind. Our legislation inadequately secures copyright protection to the authors of countries within the union and unjustly discriminates against English authors who have not been able to secure legal protection in this country and are subject to piracy on this side of the Atlantic. Great Britain has lost patience and at the Senate copyright hearing of less than a year ago it was officially intimated that formal protest had been transmitted through the British Ambassador. At that hearing the following was noted as the expression of opinion of one of the most outstanding witnesses with respect to international copyright [reading]:

It is of vital importance to the creative genius of America that we pass a bill enabling the United States to adhere to the Copyright Union. The composers and authors, musical and literary, of the United States are, I am convinced, going to suffer very substantial losses unless such a bill as will provide for the entry of the United States into the convention is enacted in the near future.

The author of the quoted words is described in Senator Duffy's report on the Copyright Convention as the general manager of a great business corporation representing "one of the most important of producing interests in the field of copyrightable material."

Gentlemen, I beg leave to express the hope that this admonition will be given grave consideration. I thank you.

ROOSEVELT APPROVES ROME COPYRIGHT PACT

*Hope for Favorable Action in
Senate Expressed in Letter
to R. U. Johnson.*

Robert Underwood Johnson, former Ambassador to Italy and secretary of the American Academy of Arts and Letters, made public yesterday a letter he had received from President Roosevelt in which the President expressed his interest in the ratification of the Treaty of Rome of 1853.

The treaty was sent to the Senate by the President in February. Its ratification would provide for the automatic entrance of American authors to the advantages of copyright protection in the fifty-three nations which compose the Berne Copyright Union.

The President's letter follows:

The White House,
Washington. April 25, 1934.

My dear Mr. Johnson:

This is to acknowledge and to express appreciation for your letter of April 16, 1934, in which you advocate the ratification of the convention for the protection of literary and artistic works, which I sent to the Senate requesting advice and consent to adherence thereto on the part of the United States, on Feb. 19 of the present year.

Needless to say, I fully concur in your sentiments and assure you that it would be most pleasing to me if, early in my administration, I should be empowered to make the United States a party to this convention.

Sincerely yours,

FRANKLIN D. ROOSEVELT.

Entry of the United States into the Copyright Union is the greatest advance possible to achieve for the benefit of our authors, artists, composers and dramatists. It has been urged for more than twenty years. It has been agreed to as desirable and has been approved by our authors and other intellectual producers; by our publishers and printers, by our University presidents and professors, by our librarians, by twenty-one notable scholarly organizations, including the American Association for the Advancement of Science and the National Education Association of America.

It is something undoubtedly very near to the hearts of all our readers of books, our students, our thinkers, and to every well-wisher of international justice and good will.

Thorvald Solberg,
Register of Copyrights, 1894 to 1930.

The New York Times

MONDAY, MAY 14, 1934.

INTERNATIONAL CONVENTION OF THE COPYRIGHT UNION

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

FIRST SESSION

ON

EXECUTIVE E, SEVENTY-THIRD CONGRESS, SECOND SESSION
INTERNATIONAL CONVENTION OF THE COPYRIGHT
UNION, REVISED AT ROME, JUNE 2 , 1928

STATEMENT BY

THORVALD SOLBERG

(Former Register of Copyrights, 1897-1930)

STATEMENT OF THORVALD SOLBERG, FORMER REGISTER OF COPYRIGHTS

We listened yesterday to statements concerning the reservations which from time to time have been made by different countries to the articles of convention. I think it would be very well to have of record in this committee an official, authentic statement of exactly what these reservations are and to what countries they apply.

I have here a copy of the official monthly publication of the International Copyright Bureau at Bern. It devotes three or four pages, in this case three, to a statement. For a number of years they have continued that practice. I have before me the last statement made, the one made on the 15th of January. If you would be willing to have this printed, you would have an unquestioned, authentic statement of exactly what reservations can be made and what have been made.

There was also testimony as to the proposals for changes in the convention from time to time as the diplomatic conferences agreed upon such changes. These are prepared very generally before the conference convenes, and, as you were told yesterday, in the case of the next conference they will go to Belgium, because the conference will take place there. But I do not know that it was stated that they must also be submitted to the Director of the International Bureau at Bern, who has considerable power to deal with proposals on first submission.

I was present at Rome, and in the conference there these proposals were distributed immediately, in printed form, or in some form of duplicated copies. There were, in all, 222 leaves, about 450 pages, of proposals, and they filled something like 400 full folio pages. The result was that about six proposals were accepted and made part of the new convention text, and that has been the procedure and the custom in every conference.

I have a statement here from which I would like to quote, a statement made after very careful examination by myself of the text of the 1908 convention and the 1924 convention.

Article 24 of the Convention provides that it may be subject to revision in conferences to take place for that purpose successively in the different countries of the Union. No change is valid except by the unanimous consent of all the countries of the Union. The Convention adopted at Berlin in 1908 was a thoroughly revised document embodying many important changes. But its text was changed only slightly at Rome in 1928. Of its 30 articles, 24 were left without any change whatever. In other articles there were only the necessary alterations of references and dates and a few administrative changes such as

the doubling of the sum provided for the expenses of the Berne Copyright Bureau and the addition of a provision to permit any country to change its class in accordance with the payment of its share of such expense. New articles were added to meet the changed conditions brought about by the war relative to colonies, protectorates and territories under mandate; and the provisions of the "Additional Protocol" adopted at Berne on March 20, 1914, were made a part of Article 9. As new subject matter of copyright, there has been added "lectures, addresses, sermons and other works of like nature," and in a new article, 2 *bis*, it is provided that the domestic legislation of each country of the Union shall enact the conditions under which such lectures, etc. may be reproduced by the press. Furthermore,

"Authority is reserved to the domestic legislation of each country of the Union to exclude, partially or wholly, from the protection provided by the preceding article political discourses, or discourses pronounced in judicial debates."

In addition to the exclusive rights enumerated in Article 14, there is included the right of the "adaptation" of the work; and whereas the 1908 text provided that:

"Cinematographic productions are protected as literary or artistic works when by the arrangement of the stage effects or by the combination of incidents represented, the author shall have given to the work a personal and original character,"

in the 1928 text this protection is secured only when "the author shall have given to the work an original character." If this is lacking, the production shall "enjoy the same protection as photographic work."

The 1908 text provides that, with the exception of serial stories and novels, any newspaper article may be reproduced by another newspaper if not expressly forbidden. The 1928 text provides that:

"Articles of current economic, political or religious discussion may be reproduced by the press if such reproduction is not expressly reserved. But the source must always be clearly indicated; the confirmation of this obligation is determined by the legislation of the country where the protection is claimed."

There remain to be noted only three wholly new articles whose brief texts are here reprinted verbatim:

Article 6 bis

(1) Independently of the patrimonial rights of the author, and even after the assignment of the said rights, the author retains the right to claim the paternity of the work, as well as the right to object to every deformation, mutilation or other modification of the said work, which may be prejudicial to his honor or to his reputation.

(2) It is left to the national legislation of each of the countries of the Union to establish the conditions for the exercise of these rights. The means for safeguarding them shall be regulated by the legislation of the country where protection is claimed.

Article 7 bis

(1) The duration of the author's right belonging in common to collaborators in a work is calculated according to the date of the death of the last survivor of the collaborators.

(2) Persons within the jurisdiction of countries which grant a shorter period of protection than that provided in paragraph 1 can not claim in the other countries of the Union a protection of longer duration.

(3) In any case the term of protection shall not expire before the death of the last survivor of the collaborators.

Article 11 bis

(1) The authors of literary and artistic works enjoy the exclusive right to authorize the communication of their works to the public by radio diffusion,

(2) It belongs to the national legislatures of the countries of the Union to regulate the conditions for the exercise of the right declared in the preceding paragraph, but such conditions shall have an effect strictly limited to the country which establishes them. They can not in any case adversely affect the moral right of the author, nor the right which belongs to the author of obtaining an equitable remuneration fixed, in default of an amicable agreement, by competent authority.

Mr. Chairman, I will make a very strong personal appeal for the entry of the United States into the Copyright Union.

There is one dominant consideration with respect to the present copyright situation to which the attention of the members of this committee should be directed; that is, the fact that the present supremely important copyright matter is to secure the adherence of the United States to the International Copyright Convention and thus become a member country in the International Copyright Union.

This union is formed by the voluntary association of more than 40 countries of the world, under adherence to the copyright treaty

on which the union is founded, in order that they may participate in the benefits secured to authors by the steady and persistent endeavor, from year to year, to work out more uniform copyright laws in all of these countries and to incorporate into such laws every reasonable improvement of the conditions of the author with respect to the adequate protection of his rights in his created works. Is it reasonably conceivable that the result—the International Copyright Convention of Rome of 1928—is not the most advanced and most perfect instrument for reciprocal world security for the works of authors? It would seem superfluous to give any extensive explanation concerning the Copyright Union at this late day—it has existed since 1887—but in view of what has been declaimed here within the last few days, I wish to make a brief exposition of the purposes and provisions of the union, so as to prevent possible erroneous deductions, and, incidentally, to correct some definite errors of statement.

The first fundamental purpose of the Copyright Union is the formulation of what may conveniently be termed a universal copyright code; the aim being to establish throughout the world a recognized measure for obtaining, by legislative enactments or treaty agreements, for authors, artists, composers, and dramatists, at least the minimum protection for the exclusive rights which should be accorded to them. This minimum protection formulated in the copyright convention is insisted upon. Every adhering country pledges itself to grant in its domestic legislation at least such minimum rights when it ratifies the treaty; but there is left to each country the privilege of enacting more liberal copyright legislation if it sees fit so to do, or the member countries of the union may, by treaties between themselves, agree upon "more extended rights than those accorded by the union." All countries which assure such minimum legal protection for the rights of authors may accede to the copyright convention upon their own request.

The further, second purpose, of the Copyright Union is to secure to intellectual creators, whatsoever their nationality be, wherever they may be resident, in all the other countries within the Copyright Union all the rights accorded to authors and all the remedies provided for the protection of such rights by the domestic legislation of each and all of those countries. The convention, in article IV, clearly defines this reciprocal protection. It declares that authors who are nationals of one of the countries of the union shall enjoy for their works * * * such rights in the other countries of the union as the respective laws now accord or shall hereafter accord to their own nationals; that is to say, that the extent of the protection, as well as the means of redress to safeguard the author's rights, are regulated exclusively by the copyright legislation of each country where the protection is claimed.

I wish to point out just here that it is upon a substantially parallel basis that our present international copyright relations are established. The Copyright Act of 1909, our present law, provides that copyrights secured by that act may be extended to an alien author—

when the foreign state or nation of which such author is a citizen or subject grants * * * to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this act or by treaty.

It is well to remember this parallel when you hear witnesses declaring their entire satisfaction with the numerous copyright agreements between the United States and many foreign countries while, at the same time, they express strenuously their objection to adherence to the general Copyright Treaty.

There are more than 40 countries of the world with which such copyright relations have been set up by means of presidential proclamations. In each and all of them, American authors receive such copyright rights and remedies as are extended in each country to its own nationals under domestic laws, but only then upon due compliance with any conditions and formalities prescribed in the domestic copyright law of each country. If, however, the United States adheres to the Copyright Treaty, this protection is accorded to American authors automatically, that is, without the necessity of complying with any formalities prescribed in the domestic laws of each member country.

The Copyright Convention is an agreement between the countries concerned. When we adhere, we obligate ourselves to accept the stipulations of the agreement. They are set out plainly in the articles of the convention. We are at liberty—nay, in good sense we are obligated—to read and consider them before we formally agree to them by ratification of the treaty. This agreement is three-fold, (1) we are bound to accord to the authors of every other country in the union the rights and remedies which our own laws accord to our own authors; (2) we are obligated to accord at least the minimum rights and remedies enumerated in the International Copyright Code to our own nationals and to the nationals of member countries; and (3) we will receive in all other countries “the rights specially accorded by the present convention”, and, reciprocally, we must extend such rights to nationals of the other countries. These rights are specific and in every instance it is provided that the domestic law of each country shall determine how such rights are to be applied.

The United States may retire from the union at will, upon giving a year's notice. While it remains a member, it has the privilege, as does each member country, to participate in any and all conferences of revision and to discuss and vote upon any changes proposed in the articles of agreement. The following declaration should be accentuated. Article IV of the Document of Agreement, the convention, expressly provides that—

no alteration in the present convention shall be binding on the union except by the unanimous consent of the countries which compose it.

No change in the text to which the United States has agreed can be made without the consent of the United States.

I will briefly summarize the provisions of the convention which

require changes in our copyright legislation in order to permit us to enter into the Copyright Union.

The literary and artistic works that are protected are enumerated. To this list we must add in our proposed enabling act the following: (1) choreographic works and pantomimes; (2) works of architecture, or models or designs of architectural works; (3) works prepared expressly for radio broadcasting, and (4) works of art applied to industry.

To the *exclusive rights* of the author, beyond what our present copyright laws accord, the convention extends the following new rights

1. To communicate the copyrighted work to the public by radio broadcasting, radio facsimile, wired radio, telephony, television, or other means of transmission (sec. 1 (f), p. 4);

2. That—

independently of the copyright in any work * * * and even after assignment thereof, the author retains the right to claim the authorship of the work as well as the right to oppose every deformation, mutilation, or other modification of the said work which may be prejudicial to his honor or to his reputation (art. VI);

3. There is proposed a convention term of copyright protection comprising the life of the author and 50 years after his death (art. VII), but it is declared that, if this term is not adopted uniformly by all the countries, then the duration of copyright "shall be regulated by the law of the country where protection is claimed", and need never exceed in the United States the term fixed in the country of origin of the work;

4. The provisions of the convention are declared—

to apply to all works which at the time it goes into effect have not fallen into the public domain of their country of origin because of the expiration of the term of protection (art. XVIII).

This takes out of the public domain in the United States all foreign works in which copyright is subsisting; but, under the terms of the convention, we may carefully safeguard persons who have previously used foreign works against threat of litigation because of such use.

5. The enjoyment and the exercise of all rights accorded by the convention are declared "not subject to any formality."

I only have attempted to indicate the principal matters dealt with. There are many excellent provisions concerning minor benefits and it should be noted how frequently, following such provisions, it is declared that their application is to be governed by the domestic legislation of each country.

I now wish to touch upon the matter of our entrance into the International Copyright Union.

This copyright union was founded in 1887, but even now, nearly 50 years later, the United States has not achieved membership. Except perhaps in the case of new members of this committee, this question of admission to the copyright union is not new, but has

been a familiar topic for discussion in the House and Senate committees on patents. Especially is this true in the decade of years since 1925, when the bill, H. R. 11258 of the Sixty-eighth Congress was introduced by Mr. Perkins on January 2 of that year. That bill extended copyright in the United States to all authors who were citizens or subjects of any country within the International Copyright Union. A number of bills followed, most of them containing the same or similar proposals. One, the Vestal bill, H. R. 12549, of the Seventy-first Congress, was passed by the House of Representatives on January 13, 1931. It was considered by the Senate Committee on Patents and, after public hearings and the incorporation of many amendments, was favorably reported by that committee with provisions to permit adherence to the copyright treaty.

It was not passed. Action on the Vestal bill was followed, on December 15, 1933, by the presentation of a petition addressed to the Secretary of State pointing out "The discreditable position occupied by the United States with reference to international copyright"; that "under our law, an author has no redress for piracy, if the language of his work is English and the manufacture foreign"; that "This constitutes a standing affront to friendly powers and cannot be defended on moral grounds."

The petition declared that "adherence to the convention would at once meet the demands of honor, improve international relations and be a boon to American authorship. It would take high rank in copyright annals and such a course is earnestly recommended." This document was signed by the presidents of 12 of our leading universities—Harvard, Columbia, Princeton, Johns Hopkins, Yale; the State Universities of California, Iowa, Minnesota, North Carolina, Texas, and Wisconsin, and the University of Chicago. In the petition, the President was requested to transmit the convention to the Senate. He did so on February 19, 1934, and it was referred to the Committee on Foreign Relations.

I have referred only to the petition from 12 of our great universities, but it should be stated that practically every university and every college and every institution of higher learning in the United States is on record in behalf of their professors and teachers to urge adherence to the Copyright Treaty. The whole educational and cultural contingent of our people included in the membership of our learned societies is recorded in favor of adherence. The following 22 associations are found listed in the reported hearing urging this forward movement: The American Library Association, the American Library Institute, the American Association for the Advancement of Science, the American Anthropological Association, the American Chemical Society, the American Council of Learned Societies, the American Council of Education, the American Philological Society, the American Physical Society, the American Political Science Association, the Society of Church History, the American Sociological Society, the Archaeological Institute of America, the Association of American Colleges, the Association of American Geog-

raphers, the Association of Urban Universities, the Geological Society of America, the Linguistic Society of America, the Modern Language Association of America, the National Educational Association, the Society of Biblical Literature, and the American Historical Association.

The very titles of these various associations indicate clearly the character of their members. It is obvious that we have here an expression of the opinion of many groups composed primarily of intellectual creators, the individuals represented being, no doubt, mostly actual or potential authors who are in this way declaring their personal opinion that the United States should take its rightful place with the other countries of the world as a member of this admirable association of nations, now numbering nearly 50 countries in all, pledged to accord reciprocal protection for the rights of the authors of each and all of them.

No question with respect to copyright has been so generally approved as entrance into the Copyright Union. Adherence to the Copyright Convention has been steadily supported by the public press. Many leading journals, among them the New York Nation, the New Republic, the Saturday Review of Literature, World Affairs, have stressed this action and repeated strong editorials have appeared in the New York Times, the Herald Tribune, the Boston Transcript, the Christian Science Monitor, the New York World-Telegram, and the Washington Post, urging this be done now. Many of our Presidents have given expression of sympathetic consideration for such betterment of our international copyright relations, including Arthur, Cleveland, Harrison, Wilson, Theodore Roosevelt, Hoover, and Franklin Delano Roosevelt. On no copyright question has there been such a unanimity of opinion.

It has been argued that the present is not an opportune time for the United States to become a party to the International Copyright Convention. May I suggest the contrary. The political disturbances throughout Europe are obvious. It is the more necessary to stress the value of every national act that makes for friendliness and peace between different nations. Right international copyright relations undoubtedly have value in that connection. The just and adequate protection of the intellectual creations of the authors of any one country, throughout all the other countries of the world, surely must make for contentment and friendly feeling, and world peace.

By adherence to this treaty we declare to all authors, artists, composers, and dramatists who are nationals of 40 other countries of the world that they shall have full legal protection for their works in the United States, and enjoy for such works every right and remedy extended to our own nationals, and this protection is automatic and unhampered by any need of compliance with conditions or formalities.

It must be frankly admitted that this declaration is desirable because of the fact that now, and for a long series of years back, the works of foreign authors are and have been inadequately protected

under the restrictions of the copyright laws of the United States. This is especially true of English authors, whose works up to 1891 were accorded no protection whatever in our country, and since that year have been so discriminated against and hampered by certain provisions of our copyright laws, especially the obligatory manufacture of their works in the United States as a condition for obtaining copyright, that a very large number estimated as fully three-quarters of the books published from year to year in Great Britain and her Colonies have failed to secure to their authors legal protection in our country for their literary property.

This unhappy situation would be remedied upon our accession to the International Copyright Union by acceptance of the Copyright Treaty of Rome of 1928.

Adherence to that convention is therefore desirable as a diplomatic measure tending to allay the increasing irritation of foreign authors, especially English authors, against the United States by reason of our failure to protect their literary property in an adequate manner.

Moreover, it should be pointed out that adherence is desirable in order to secure the adequate protection of the literary property of American citizens in all of the 40 countries, members of the International Copyright Union. I cannot deal with this matter in detail, but it seems certain that the piracy of works by American authors has occurred in several foreign countries. The financial and moral loss resulting cannot be exactly estimated, but it is felt to be of serious extent. If the United States becomes a member of the Copyright Union, by adherence to the Copyright Convention, our authors will automatically secure copyright for all their works without the necessity of complying with any formality, in every country within the Copyright Union.

Our national remissness with respect to literary property protection has become so marked and has given rise to so much criticism that there are plain indications that unless we do accept the Copyright Convention, foreign countries may retaliate by restricting the copyright protection of citizens of the United States in the respective countries of the Copyright Union. Articles of the Copyright Convention authorize such procedure, and Great Britain has given us plain notice that the present great discontent in England is demanding legislation to that end.

It has been felt desirable that simultaneously with acceptance of the Copyright Convention, Congress should enact such proffered amendments of our copyright legislation as have been accepted, approved, and recommended.

There is much to be said for this proposal. But for more than a decade of years very many bills for the amendment of our copyright laws have been presented to Congress, and many hearings have been held and much testimony has been submitted and printed. But up to the present time there has been disclosed such differences of opinion and such insistence upon the differing proposals and such persistent refusal to compromise or to reach agreement, that there is no cer-

tainty (indeed hardly reasonable hope) that Congress will even be allowed to try to enact such legislation at this session.

During the last session, on June 6, 1936, the chairman of this committee made the following statement:

Under the rules of the Senate the treaty automatically will be returned to the Committee on Foreign Relations at the end of this session of Congress. At the next session of Congress it may be reported * * * It may be presented then for ratification notwithstanding the failure of any legislation of the character which I have indicated.

Personally, I am so strongly of the opinion that the entry of the United States into the Copyright Union is the one supremely important copyright advancement now to be accomplished, that I very earnestly would request this committee to report promptly the Copyright Convention of Rome with the recommendation that its ratification by the President be authorized.

The enactment of amendatory copyright legislation to follow.

The Development of International Copyright Relations between the United States and Foreign Countries.

By Thorvald Solberg, Washington.

The earliest legislation for the protection of the works of authors within the limits of the United States was enacted by the General Court of the State of Connecticut in its January session of 1783 and was entitled: "An Act for the Encouragement of Literature and Genius." It was followed by similar acts of the following States: Massachusetts, on March 17, 1783; Maryland, on April 21, 1783; New Jersey, on May 27, 1783; New Hampshire, on November 7, 1783; Rhode Island, in December, 1783; Pennsylvania, on March 15, 1784; South Carolina, on March 20, 1784; Virginia, in October, 1785; North Carolina, on November 19, 1785; Georgia, on February 3, 1786; New York, on April 29, 1786. The State of Delaware alone failed to enact such a law.

Upon a careful scrutiny of these earliest State laws we discover in the language used a key to the narrow and limiting character of the copyright legislation of the United States, and of its lack of a just understanding of the scope of literary-property protection.

These State laws provided protection for "Books not yet printed", and the North Carolina Act stated specifically that it should not prevent any person from reprinting any book already published; but South Carolina and Virginia provided that in the case of books already printed, if copies of such books had not been transferred to other persons, their authors should have the sole right to continue printing them.

A resolution of the Colonial Congress of the United States, of April 21, 1783, recommended that the several States should secure to authors or publishers the copyright of their new books, which implied protection for all authors of the United States in each such State; but eight of the states insisted that protection in that state should be contingent upon reciprocal protection in the other states and should not extend to persons who were citizens or subjects of any other of the United States until such state had passed similar laws in favour of authors, and Pennsylvania and Maryland provided that their Acts should not be in effect until such time as all and every state in the Union should have passed similar laws.

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In the enactment of these laws foreign authors were not taken into consideration. The law of North Carolina provided that citizens of the United States "and none other" should be entitled to the benefit of the Act, and that it should not prevent any person from importing, reprinting, or publishing a book originally published in any other country. South Carolina, also, provided that nothing in its Act "should prohibit the importation, vending, or selling of any book in Greek or Latin, or any other foreign language, printed beyond the seas."

The Constitution of the United States adopted on September 17, 1787, contained in its Article 1, Section 8, a provision to the effect that "Congress shall have the power to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries". This Constitutional provision must govern all copyright legislation. Under its authority the First Federal Copyright Act was passed by Congress on May 31, 1790. In this first general law for the protection of authors we find the same isolated and undeveloped sense of literary property.

That act provided:

"That nothing in this Act shall be construed to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books, written, printed or published by any person not a citizen of the United States in foreign parts or places without the jurisdiction of the United States."

That provision was repeated in the copyright acts of 1831, 1870, and in the Revised Statutes of 1873. Its inclusion in our early copyright laws permitted and laid the foundation for the long-continued practice of the piracy of English books which brought discredit upon the United States. More than a century elapsed before legislation was secured which permitted foreign authors to obtain copyright in the United States.

Agitation for a more cultivated, just and expedient attitude towards the protection of foreign authors began in the nineteenth century. In 1837 an "Address of certain Authors of Great Britain" was presented to Congress on February 2d. It complained of the lack of protection for their works in the United States; insisted that such lack of legal security had inflicted not only injuries to their literary property, but upon their reputations and on the interests of literature and science. The signers of this petition insisted that "a just regard for the rights of British authors ought to constitute a bond of union and friendship between the United States and Great Britain". The document was subscribed to by fifty-six of the then most prominent authors of England, including the poets Robert Southey, Thomas Campbell and Samuel Rogers; the novelists Bulwer-Lytton, G.P.R. James, Maria Edgeworth and Miss Mitford. Both Benjamin and Isaac D'Israeli, Henry H. Milman, Henry Hallam, William and Mary

Howitt, Mrs. and Mr. Samuel Carter Hall, Mrs. Mary Somerville, Miß Harriet Martineau and Thomas Carlyle.

This document was presented to the Senate by Henry Clay and was referred to a "Select Committee" to which was also referred a "Memorial" petitioning legislation to protect foreign authors, signed by thirty leading American writers including the poet Longfellow, distinguished citizens, prominent journalists and others. On February 16, 1837, Senator Clay submitted a Report from the Committee. It contained the declaration that authors and inventors have a property in the respective productions of their genius, and that literary property is entitled to legal protection wherever this property is situated. The Report was accompanied by the first international-copyright bill ever introduced in the Congress of the United States. This Bill provided that the provisions and benefits of the copyright law then in force in the United States (the Act of February 3, 1831) should be extended to all works by the authors of Great Britain and Ireland and France, which should be published subsequently to the passage of the proposed Act, "in the same manner as if such authors were citizens or residents of the United States". Senator Clay's Report pointed out that the Constitutional authority to legislate on copyright did not limit or confine the grant to natives or residents of the United States and that "the promotion of the progress of Science and the Arts will be increased by the motives which the Bill offers to the inhabitants of Great Britain and France".

But even this first Bill, intended to cure a great injustice done to foreign authors in the United States, makes the extension of the copyright protection accorded by the domestic law depend, not only upon compliance with all its requirements, including the filing of a printed title-page, but further required that an edition of the foreign book should be printed and published in the United States simultaneously with the issue of the book in the foreign country, or within one month after the deposit of the title of the work. The submission of the bill was followed by numerous petitions for and against its enactment and the beginning of the considerable pamphlet literature in favor of legal protection for foreign authors.

The numerous petitions and memorials concerning international copyright were submitted to the Senate Committee on Patents and from that committee Senator John Ruggles submitted an adverse report on June 25, 1838.

The visit of Charles Dickens to the United States a few years later, and his frank criticism of existing copyright conditions stimulated renewed effort upon the part of right-minded Americans and petitions were again addressed to Congress bearing the signatures of distinguished persons who urged suitable action to secure legal protection for foreign authors.

Following the petition of the British authors in 1837 a draft for a convention between Great Britain and the United States to secure international copyright protection was transmitted by Henry

John Temple, Lord Palmerston, in a letter to the United States Minister at London, on March 6, 1839. It was submitted to the Department of State of the United States and together with the correspondence which ensued, and, following a Resolution adopted by the House of Representatives on April 7, 1842, was transmitted to that body on April 12. The proposed treaty was referred to a Committee which had been appointed to deal with the several new memorials from Washington Irving and other distinguished Americans who were in favor either of the enactment of legislation to grant copyright protection to foreign authors or the ratification of some treaty or convention to secure the same result.

This proposed treaty — the earliest definite proposal for such an agreement between the United States and Great Britain — consisted of but three brief articles. The first provided that authors of books first published in the United Kingdom or any other part of the British Dominions, "shall have the sole liberty of printing and reprinting such books within the United States, and shall have all other privileges, rights, remedies and protection to which the citizens of the United States are now entitled in respect of works first published in the territories of the United States". The second article provided for reciprocal protection in Great Britain for authors of books first published in the United States, and the third article provided that no person should be entitled to the benefits of the treaty in either country, until all the regulations in effect in the territories where the protection was sought to be enforced had been duly observed, with respect to the registration of books first published in a foreign country and in regard to the delivery of a copy of such book. No further action is recorded in regard to this proposed treaty.

During the next ten years the subject of legal protection in the United States for foreign authors was recurrently presented to the attention of Congress for its consideration. On December 15, 1843, Senator Rufus Choate, one of Americas most distinguished lawyers presented the memorial of publishers of the United States who contended that the best interests of authors, readers, publishers and printers would be promoted by a law "which would secure to the authors of all nations the sole right to dispose of their compositions for publication in the United States ("whether they may be published in foreign countries or not") provided always, that the book be printed in the United States . . . after its publication in a foreign country and provided, also, that the copyright shall be transferable from the author to the American resident publishers only". The following year an able argument for international copyright was submitted to Congress from the pen of Nahum Capen of Boston. In 1846 the various memorials, petitions, et cetera concerning international copyright were referred to another Senate Select Committee; but no action followed. In 1848 notable new memorials signed by such distinguished Americans as John Jay, William Cullen Bryant and others, were printed together as a

Senate document, and therein was presented most thoroughly the arguments for a law "which would not only be an act of national justice, but of national policy; that would afford to our native authors what they have never yet enjoyed, 'a fair field'; that would supply a new stimulus to intellectual exertion, infuse a more elevated tone into our national literature, give a healthier character and a wider competition to the American book trade and secure a better class of books for general circulation".

On February 1, 1851, Mr. Robert Charles Winthrop presented the Memorial of the American Medical Association in favor of international copyright, and on July 19, 1852, the distinguished Senator, Charles Sumner, presented a petition by Washington Irving, James Fenimore Cooper and others supporting the plea for suitable legislation to protect foreign authors.

The following year, 1853, copyright agitation was stimulated by a noticeable movement from an entirely different quarter. On February 24 of that year, the President of the United States, Mr. Millard Fillmore, transmitted to the Senate the text of a Convention between the United States and Great Britain "for the Establishment of International Copyright" which had been signed at Washington on February 17, 1853, by Edward Everett, Secretary of State of the United States and John Fiennes Crampton, British Minister to the United States. It was ordered printed for the confidential use of the Senate, and was referred to the Committee on Foreign Relations and was reported to the Senate from that committee on March 15, 1853, "without amendment". On April 5, same year, it was considered by the Senate and "ordered to lie upon the table". On December 20, 1853, it was referred back to the committee, and on January 24, 1854, it was again reported without amendment. Meantime the text of the treaty had been published in newspapers without authority, and awakened country-wide discussion. Petitions against its ratification were sent to the Senate from Pennsylvania, New York, Ohio, Michigan, Connecticut and Massachusetts. On February 15, 1854, five New York publishers — D. Appleton & Co., G. P. Putnam & Co., Robert Carter & Brother, Charles Scribner and Stanford & Swords submitted to the United States Secretary of State what they deemed to be further necessary requirements to be incorporated into the proposed treaty. These were: the filing of the title of the foreign book in Washington before its publication; the setting up and printing and binding of the foreign author's book in the United States, — the American publisher to show his right to the book from the foreign author in writing. It was further proposed, that "if within thirty days after the publication of the book abroad no authorized edition was published in the United States", then any one might reprint it. On February 24, 1854, these proposed additional articles to the convention were submitted to the Senate and referred to the Committee on Foreign Relations. From a letter written by Senator Charles Sumner we learn that the treaty was again considered

by the Senate and was finally "laid upon the table" without any conclusive vote.

This treaty as proposed consisted of twelve articles and provided that authors of all works (defined to include also dramas, music, engravings and lithographs), to whom the laws of either of the two countries gave the right of copyright, should be entitled together with their assigns, to exercise that right and should be protected against piracy in the other country. Such protection should include the right of representation of dramatic works and the performance of music. Registration of the work and the deposit of a copy of it were required to be made within three months after publication and it was agreed that within a year after first publication a reprint might be published in the other country; but at a selling price not to exceed the cost of the cheapest edition of the work in the country of origin.

The proposed treaty of 1853 was, at the request of the British Minister, submitted by William L. Marcy, Secretary of States, to the Attorney General of the United States and on February 16, 1854, Caleb B. Fushing rendered an opinion that the treaty when ratified would become a law of the United States without further action by Congress or the Government of the United States.

On December 10, 1857, a second International Copyright Bill was presented to Congress by Edward Joy Morris, a Member from Pennsylvania. This bill required manufacture in the United States of the foreign book within one month after first publication. It secured no attention. After the interruption of the civil war, and upon the second visit of Charles Dickens to the United States in 1867, copyright agitation was renewed and petitions were submitted to Congress urging legislation. These were referred to the Committee on the Library with instructions to consider them and make a report. Mr. John Denison Baldwin did submit a Report on February 21, 1868, forcibly presenting the need for and the advantages of a law to protect in the United States works by foreign authors, and he proposed a Bill (the third International Copyright Bill) for the legal protection in the United States of foreign authors of books, maps, dramas or musical works as well as foreign designers of engravings, published after the proposed Act should have gone into effect. The protection was to be that accorded by the domestic law of the United States, but was contingent upon reciprocal protection in foreign countries for American authors and was dependent upon compliance with the following requirements: 1. Deposit of one copy of the best foreign edition in the Library of Congress; 2. Registration of the title-page in a district court of the United States within three months after first publication; 3. Arrangement within that period for the immediate republication in the United States; 4. Deposit of two copies in the Library of Congress and registration a second time; 5. Similar procedure in the case of a proposed translation, if the reservation of the right of translation had been announced on the title-page of the original work, and the authorized

translation was offered within six months after registration; 6. The original work and any translation must have been wholly manufactured in the United States and published by a citizen of the United States. No Congressional action was taken upon that bill; but its introduction to Congress led to a considerable agitation among authors and an increment of the already large literature upon the subject of better copyright relations with England.

On April 9, 1868, the International Copyright Association was formed with William Cullen Bryant as President and with a long list of distinguished American authors as Members. But this wide-spread discussion of international copyright had no effect upon Congress and no action was taken either upon the various petitions, the Report of the committee, or the proposed bill.

In 1870 Lord Clarendon submitted to the attention of the United States through Sir Edward Thornton the British Minister at Washington, the draft of a "Convention for Copyright Protection" between the United States and Great Britain. It was identical with the Copyright Convention signed on February 17, 1853, except that article six of the latter was omitted. Article six permitted the republication of any foreign book within a year after its first appearance at a price not more expensive than the cheapest former price.

In 1872 the Executive Committee of the Copyright Association adopted for presentation to Congress another international copyright bill, which was admirable in substance and form. It provided that "All rights of property secured to citizens of the United States, are hereby secured to the citizens and subjects of every country, the government of which secures reciprocal rights to citizens of the United States". The act was to take effect two years after its passage. Upon its publication, Mr. William H. Appleton, the well-known publisher, offered to withdraw a bill which he had advocated and to accept the Copyright Association Bill provided this last were amended by adding the requirement that the foreign book which was to be protected must be manufactured in the United States.

The Clarendon treaty draft had been submitted to Harper Brothers the long-established publishers, by the British Minister to the United States, whereupon the publishers in a letter to the United States Secretary of State (William M. Evarts) suggested that a commission to consider and present the details of a copyright treaty to be proposed by the United States to Great Britain should be appointed to consist of three authors, three publishers and three publicists from each country.

This new agitation on the subject of copyright induced the Joint Committee on the Library of Congress to hold two public meetings for hearing testimony upon international copyright, and arguments pro and con were listened to from authors and publishers, the latter largely in opposition. A letter by Harper & Brothers was read which ended as follows:

"In view of the great results which have grown out of the freedom of literary exchange which we now enjoy . . . the liberalizing, broadening, elevating influence upon the national mind of the choicest thoughts of another great and cultivated people now so freely open to it, it is our belief that the adoption of any serious restriction upon this freedom would be a very hazardous experiment, and possibly an irrevocable calamity to the nation."

On February 7, 1873, Senator Justin Smith Morrill submitted to Congress from the Library Committee a Report declaring that after attentive consideration of the subject-matter, the committee found "that the question of international copyright was attended with grave difficulties and of doubtful expediency, not to say of questionable authority".

In 1878, for the fourth time a movement was started to secure international copyright by a treaty between the United States and Great Britain. It is noticeable that this originated with Harper & Brothers who had previously been so outspoken in opposition. On November 25 of that year they submitted to William M. Evarts, Secretary of State, a draft for an International Copyright Convention based upon the so-called "Clarendon Treaty" of 1870, the two texts being printed in parallel columns. The important change proposed by Harper & Brothers was the proposal that British authors should secure reciprocal copyright protection in the United States only upon registration in the United States of the title of the English work before its publication abroad and that within six months thereafter the book should be manufactured and published in the United States by a citizen of the United States. In September 1880 the draft for a copyright convention proposed by Harper & Brothers was communicated by Mr. James Russell Lowell, American Minister at London, to Lord Granville who sent it to the British Board of Trade, by which it was submitted to various English authors and thus were elicited interesting opinions from various distinguished British writers including James Anthony Froude, the historian, and Herbert Spencer. But an anonymous contributor to the London Times insisted that any treaty such as proposed would not be binding in the United States unless supported by suitable legislation, and thereupon, the matter was dropped.

Following the agitation over this last treaty proposal, there was a growth of public opinion that legislation should be secured to give legal protection in the United States to the works of foreign authors and a stream of "Memorials" and "petitions" were forwarded to Congress urging the enactment of such legislation. Paragraphs in favor of international copyright were included in the Messages to Congress of Presidents Arthur and Cleveland. One Bill followed another for this purpose — more than forty in all — up to the time of the final action upon the much discussed Chace Bill which became law on July 1, 1891.

That bill amended then existing law so as to extend copyright in the United States to foreign authors by removing from the

Revised Statutes of the United States of 1873 (section 4952) the words which limited copyright protection in the United States "to any citizen of the United States or resident therein", thus extending the grant of copyright to any author notwithstanding he might be a foreigner. By repealing section 4971 of the Revised Statutes, also, which directly permitted the printing, publishing, importation, or sale of any book . . ." written, composed, or made by any person not a citizen of the United States nor resident therein", in put an end — after the lapse of a full century — to the long-continued practice of literary piracy, originally made possible by the provisions of the copyright act of 1790.

But the Act of 1891 was only made applicable to "a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America, the benefit of copyright on substantially the same basis as to its own citizens". This fact of the existence of copyright reciprocity was to be determined by the President of the United States by a suitable proclamation.

The first copyright proclamation was dated on the day the Act of 1891 went into effect, namely July 1, 1891, and was in favor of Belgium, France, Great Britain and the British possessions and Switzerland. The provision of law authorizing such proclamations is in force at the present time and since 1891 similar proclamations have been issued in behalf of 24 additional countries including three in behalf of Germany dated April 15, 1892; April 9, 1910 (with other countries) and December 8, 1910; this last to extend to Germany the benefits of section 1 (e) of the Act of July 1, 1909, securing copyright controlling the mechanical reproduction of musical works.

It is to be observed that this copyright arrangement is not the exact equivalent of reciprocal copyright protection established under the articles of a treaty or convention. Under the President's Copyright Proclamation there is only extended to foreign authors access to the copyright laws of the United States in order to secure to such foreign authors the rights and remedies which said laws extend to domestic authors, and the benefits depend absolutely upon full compliance with all conditions and formalities prescribed in said laws.

Some of the copyright proclamations have been issued after the ratification of certain treaties. The earliest proclamation in behalf of Germany is an example. It followed, on April 20, 1892, upon the signing, on January 15, 1892, by James G. Blaine, Secretary of State of the United States, and Alfons Mumm von Schwarzenstein, German Chargé d'Affaires, of the "Uebereinkommen zwischen dem Reich und den Vereinigten Staaten von Amerika über den gegenseitigen Schutz der Urheberrechte". This document, while in the form of a treaty, did not take the usual prescribed course of submission to the Senate for its approval. It was, however, accepted as authority for the President's determi-

nation that the required reciprocal copyright protection was available in Germany for the protection of works by authors of the United States.

The German text of this document is as follows:

Art. 1. Die Bürger der Vereinigten Staaten von Amerika sollen im Deutschen Reich den Schutz des Urheberrechts bezüglich der Werke der Literatur und Kunst sowie des Schutzes der Photographien gegen unbefugte Nachbildung auf derselben Grundlage genießen, wie solcher den Reichsangehörigen gesetzlich zusteht.

Art. 2. Dagegen übernimmt die Regierung der Vereinigten Staaten die Verpflichtung, daß der Präsident der Vereinigten Staaten in Gemäßheit der Sektion 13 der Kongreßakte vom 3. März 1891 die hierin vorgesehene Proklamation behufs Ausdehnung der Bestimmung dieses Gesetzes auf deutsche Reichsangehörige erlassen wird, sobald der Staatssekretär amtlich davon in Kenntnis gesetzt worden ist, daß deutscherseits das gegenwärtige Abkommen die erforderliche gesetzgeberische Genehmigung erhalten hat.

Art. 3. Das gegenwärtige Abkommen soll ratifiziert und die Ratifikationsurkunden sollen sobald als möglich in Washington ausgetauscht werden.

Das Abkommen tritt mit dem Ablauf von drei Wochen von dem Tage des Austausches der Ratifikationsurkunden ab in Kraft und findet nur auf die zur Zeit seines Inkrafttretens noch veröffentlichten Werke Anwendung. Dasselbe bleibt in Wirksamkeit bis zum Ablaufe von drei Monaten nach erfolgter Kündigung seitens eines der vertragschließenden Teile.

Das vorstehende Übereinkommen ist ratifiziert worden und die Auswechselung der Ratifikationsurkunden hat am 15. April 1892 in Washington stattgefunden.

The second proclamation in behalf of Spain, dated April 11, 1899, was to proclaim the treaty of peace between the United States and Spain after the close of the Spanish-American war, signed at Paris on December 10, 1898. The thirteenth article provided that:

"The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba and in Porto-Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty (April 11, 1899) shall continue to be respected. Spanish scientific, literary and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories for the period of ten years, to be reckoned from the date (April 11, 1899) of the exchange of ratifications of this treaty."

The proclamation of January 13, 1904, in behalf of China was to promulgate the commercial treaty between the United States and China, signed at Shanghai on October 8, 1903; of which document article eleven concerns copyright. In substance it provides that in order to secure the benefits accorded by the copyright laws of the United States, China "agrees to give full protection . . . to all citizens of the United States who are authors, designers or proprietors of any book, map, print or engraving especially prepared for the use and education of the Chinese people or translation into Chinese

of any book, in the exclusive right to print and sell such book, map, print, engraving or translation in the Empire of China during ten years from the date of registration. With the exception of the books, maps, etc. specified above, which may not be reprinted in the same form, no work shall be entitled to copyright privileges under this article. It is understood that Chinese subjects shall be at liberty to make, print and sell original translations into Chinese of any works written or of maps compiled by a citizen of the United States. This article shall not be held to protect against due process of law any citizen of the United States or Chinese subject who may be (the) author, proprietor or seller of any publication calculated to injure the well-being of China."

The proclamation of May 17, 1906, in behalf of Japan was to promulgate the copyright Convention between the United States and Japan which was signed on November 10, 1905, to secure reciprocal protection for works of literature and art as well as photographs published after the treaty shall have come into operation. Article 2 provides that subjects or citizens of each country "may without authorization translate books, pamphlets or any other writings, dramatic works and musical compositions published in the dominions of the other by the subjects or citizens of the latter and may print and publish such translations."

On May 19, 1908, two treaties were signed upon behalf of the United States and Japan at Washington for the protection of trademarks and copyrights — one in China and the other in Korea —. The protection is to be reciprocal and unauthorized reproductions published prior to the conventions and after May 10, 1906, "shall be withdrawn from sale or circulation within one year". American citizens who infringe shall be under the exclusive jurisdiction of the Japanese courts in Korea, "the extraterritorial jurisdiction of the United States being waived", but patents and trademarks and copyrights previously secured in Japan, shall be entitled to registration in Korea without fee if effected within one year.

The Proclamation of October 15, 1912, was to promulgate the Copyright Convention between the United States and Hungary signed at Budapest on January 30, 1912. This treaty provided for the reciprocal protection of literary, dramatic and musical works, including the copyright control of mechanical musical reproduction, also photographic works, subject to the performance of the conditions and formalities prescribed by the laws and regulations of the country where protection is claimed; such protection to be independent of the existence of protection in the country of origin of the work, and for the term provided by law in the country where protection is claimed.

The copyright relations established between the United States and Great Britain and promulgated by the Proclamation of the President of the United States, Benjamin Harrison, on July 1, 1891, covered only published works issued after that date. Protection for works by American authors in the United Kingdom depended upon first (or simultaneous) publication in Great Britain.

That did not, however, necessitate the printing or manufacture of the book in Great Britain, but only the bona fide placing on sale of the work.

In 1915 it was deemed desirable to take measures to extend copyright protection in Great Britain to unpublished works by authors of the United States. To accomplish this an Order in Council was drafted under the provisions of the British Copyright Act of 1911, dated February 3, 1915. It provides that the 1911 Act "shall apply to literary, dramatic, musical and artistic works, the authors whereof were at the time of the making of the works citizens of the United States of America, in like manner as if the authors had been British subjects." That protection was subject, however, to the accomplishment of the conditions and formalities prescribed by the laws of the United States and was for a term of protection not to exceed that conferred by the laws of the United States, and if the work was published in Great Britain, the publisher must comply with the requirement of the British Act as to deposit of copies of the book in certain libraries. This Order in Council applies to the British Dominions, except the self-governing dominions of Canada, Australia, New Zealand, South Africa and Newfoundland. Meantime a Presidential Copyright Proclamation had been signed by President Woodrow Wilson on January 1, 1915, extending to subjects of Great Britain all the benefits of section 1 (e) of the United States Copyright Act of July 1, 1909, protecting composers against the unauthorized reproduction of their musical works by means of mechanical contrivances. Following similar Orders in Council by New Zealand, December 1, 1916, and Australia, March 15, 1918, the benefits of section 1 (e) of the Act of 1909, were extended to each country respectively by Proclamations of February 9, 1917, and April 3, 1918.

On December 16, 1920, there was signed at Washington a treaty between the United States and Siam, of which article 12 related in part to copyright. This treaty was ratified by Siam on April 29, 1921, and by the President of the United States on May 6, 1921, and was proclaimed by President Warren G. Harding on October 12, 1921.

Pan-American-Copyright Conventions.

An entirely distinct group of international conferences have had to do with the establishment of copyright relations between the United States and the Central and South American countries. At the so-called South American Congress which met at Montevideo in August 1888, three treaties were formulated for the protection (1) of patents, (2) of trade-marks and (3) of copyrights. This last one was adopted on January 11, 1889, and on July 11, 1890, the President reported to Congress the proceedings of the International American Conference at its sessions at Washington in 1890 and the ratification of that copyright convention by Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela, to-

gether with the recommendation of the conference that the remaining Latin-American Governments should also complete ratification. Apparently only eight countries took final action — Brazil and Chile not having proclaimed their ratifications. Subsequently, the adherence of the following European countries was proclaimed: Belgium, France, Italy, Austria, Germany and Spain.

Of these six foreign countries adhering to this Pan-American Convention of January 11, 1889, all were recognized by Argentina and Paraguay; but Bolivia recognized only the adherence of Austria and Germany. The United States has never adhered.

This First Pan-American Copyright Convention of January 11, 1889, contains eleven articles. Art. 1 declares the recognition of the rights of literary and artistic property; art. 2, that authors shall enjoy in the contracting States the legal rights accorded in the country of first publication; art. 3, defines "copyright"; art. 4, declares that copyright shall not exist for any longer period than in the country of origin; art. 5, enumerates the classes of works which shall be protected; art. 6, declares that translators shall enjoy protection for their translations; art. 7, that newspaper articles may be reproduced, except when relating to the sciences or the arts; art. 8, that public speeches and judicial opinions may be published without authorization; art. 9, that indirect appropriation of a work and adaptations or arrangements are illicit; art. 10, that works published under pseudonyms or anonymously are nevertheless protected; art. 11, that infringers shall be brought before the courts and tried according to the laws of the country where the infringement has taken place.

A "Convention between the United States and other powers on Literary and Artistic Copyright" — the Second Pan-American Copyright Convention — was signed in the City of Mexico on January 27, 1902, by the United States and sixteen other countries. Ratifications were subsequently deposited by Guatemala on April 25, 1902; by Salvador on May 19, 1902; by Costa Rica on June 25, 1903; by Honduras on July 4, 1904; by Nicaragua on August 13, 1904; and by the United States on March 31, 1908, after having been ratified by President Roosevelt on March 16, 1908, and it was proclaimed by him on April 9, 1908.

This Convention consists of sixteen articles. The first declares the formation of a Union to protect Literary and Artistic property, and the second article enumerates the classes of works protected. Art. 3, defines copyright and declares that the protection includes translations; Art. 4, states in detail the formalities required to be complied with; Art. 5, provides that authors shall enjoy rights now or hereafter accorded to citizens; but for a term of protection not to exceed that granted in the country of origin, which is defined in Art. 6, to be the country in which the work was first published; Art. 7; declares that translations shall be protected like original works; Art. 8, that newspaper articles may be reproduced; Art. 9, that works published under pseudonyms may be protected; Art. 10, that public addresses and judicial opinions may be published without

authority, as well as works according to Art. 11 devoted to instruction or chresomathy; but indirect use of a work is declared unlawful by art. 12, as well as reproduced works with notes or commentaries. Art. 13, provides that fraudulent works are liable to sequestration, and, according to Art. 14, each Government may control the circulation, representation or exposition of any work. Art. 15 and 16, provide for adherence and ratification.

A "Convention to protect Patents of invention, drawings and Industrial Models, Trade-Marks, and Literary and Artistic Property" — the Third Pan-American Convention — was signed at Rio de Janeiro on August 23, 1906. Its text establishes administration machinery for registration to protect the rights accorded by the various Conventions adopted in 1902. Two Bureaus for international voluntary registration are established, one at Havana to have charge of registrations from the United States, Mexico, Venezuela and the Central American countries, the other at Rio de Janeiro for registrations from the remaining South American countries. The formalities to be complied with are formulated with considerable detail.

On August 11, 1910, a "Convention on Literary and Artistic Copyright" was signed at Buenos Aires by the United States and nineteen Latin-American Countries. It was ratified by the United States on March 12, 1911, and was proclaimed on July 13, 1914. This is the Fourth Pan-American Copyright Convention. It has been made effective as between the United States and Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay and Uruguay. This Convention consists of sixteen articles and contains substantially the same provisions as the second Pan-American Copyright Convention of 1902, with some verbal changes, the one noticable alteration being the omission of the requirement of deposit of copies with petitions for copyright protection, article 3, providing instead that:

"The acknowledgement of a copyright obtained in one State, in conformity with its laws, shall produce its effects of full right in all the other States, without the necessity of complying with any other formality, provided always there shall appear in the work a statement that indicates the reservation of the property right."

The Fifth Pan-American Conference was held at Santiago, Chile, from March 25 to May 3, 1923. All Latin-American republics were represented, — except Bolivia, Mexico and Peru. Four treaties were discussed, but not copyright.

The "Sixth International Congress of American States" met in Havana, Cuba from January 16 to February 20, 1928. The President of the United States, Calvin Coolidge, was present and Charles Evans Hughes then Secretary of State (now Chief Justice of the Supreme Court of the United States) was chairman of the American delegation. At this conference there was adopted a revised text of the Copyright Convention of August 11, 1910, with reservations

upon the part of Chile and Venezuela. Of the Convention of 1910, twelve articles were left unchanged, two articles were amended, and five new articles were added. The new provisions secure to authors control of the use of their works by means of cinematography; and such productions were themselves made protectable; authors of both literary and musical works were secured against unauthorized mechanical reproduction. The Berne Union period of copyright protection, life of author, plus 50 years thereafter, was adopted, and the moral right of the author was declared, namely that such authors:

"Shall hold upon their works a moral right of inalienable control which will permit them to oppose any public reproduction or exhibition of their altered, mutilated or revised works."

The change adopted in article 3 was to add after the requirement of the statement in the work that the property right was reserved, the following additional matter:

"The name of the person in whose favor the reservation is registered; likewise the name of the country of origin, the country in which first publication was made, or those in which simultaneous publications were made, as well as the year of the first publication."

Art. 16 reads: "The present Convention shall replace between the contracting States the Buenos Aires Convention of August 11, 1910. The latter shall remain in effect as to the relations of the States that do not ratify this Convention" . . . "The Signatory States of the present convention shall be at liberty upon exchanging ratifications to declare that upon this or that point they understand that they shall be bound by the provisions of any previous convention which they have signed".

The International Copyright Union: The Berne Convention.

When the movement for the creation of the International Copyright Union had reached the conference at Berne of September 1884, the President of the United States, Mr. Chester A. Arthur, referred to the matter in his message to Congress in the following words: "The question of securing to authors, composers, and artists copyright privileges in this country in return for reciprocal rights abroad is one that may justly challenge your attention. It is true that conventions will be necessary for fully accomplishing this result, but until Congress shall by statute fix the extent to which foreign holders of copyright shall be here privileged, it has been deemed inadvisable to negotiate such conventions. For this reason the United States were not represented at the recent conference at Berne."

At the next Berne conference in September 1885, the United States Minister at Berne, Mr. Boyd Winchester attended but without committing his Government. President Grover Cleveland in his Annual Message to Congress mentioned the matter and added: "The

interesting and important subject of international copyright has been before you for several years. Action is certainly desirable to effect the object in view . . . There may be question as to the relative advantage of treating it by legislation or by specific treaty."

The correspondence between the Government of Switzerland and the United States Secretary of State relative to representation at the third Berne conference of September 1886 was sent by President Cleveland to Congress on July 9, 1886. No official action was taken; but in his Annual Message of December 6, 1886, he said in part:

"The drift of sentiment in civilized communities toward full recognition of the rights of property in the creations of the human intellect has brought about the adoption by many important nations of an International Copyright Convention, which was signed at Berne on the 9th of September, 1886. The right of adhesion to the Berne Convention hereafter has been reserved. I trust the subject will receive at your hands the attention it deserves, and that just claims of authors, so urgently pressed, will be heeded."

At the conference for revision held in Paris on April 15, 1896, there was no official delegate from the United States in attendance, but at Berlin in 1908, the United States Register of Copyrights attended as the official delegate appointed by the Secretary of State of the United States, "to make observations and report". At the conference held in Rome in 1928, the Register of Copyrights (Thorvald Solberg) again was present as the delegate nominated for that purpose by the Committee on Patents of the House of Representatives (the committee charged with the consideration of all matters relating to copyright legislation). In addition, the Hon. Sol Bloom, Member of Congress from New York City was present, and Hon. Henry Prather Fletcher, Ambassador of the United States to Italy, served as the Chairman of the American delegation and submitted a non-committal report. In my thirty-second and final report as Register of Copyrights (1929) I officially urged the adherence of the United States to the Copyright Convention of Berne as revised at Rome in 1928.

A great many bills have been presented to Congress proposing adhesion to the Berne Copyright Convention, and one such bill was passed by the House of Representatives on January 13, 1931. That bill proposed the acceptance of the Berne Convention as revised at Berlin in 1908. At that time special interests were opposed to adherence to the revision of Rome of 1928. The Convention adopted at Rome in 1928 proposed a period of grace to enable the United States to adhere to the Berlin revision of 1908. That period expired on August 31, 1931. It is therefore no longer a question that adherence should now be made to the Convention as revised at Rome in 1928, when friends of international copyright finally succeed in securing the long delayed entry of the United States into the International Copyright Union.

The United States has been unable to enter this Union because a basic article of the convention upon which the Union is founded is that the enjoyment and the exercise of the rights accorded by the Convention of Berne shall not be subject to any formality; but that protection is to be automatic in the case of any and all works by authors who are citizens or subjects of any country within the Union, or who first publish their works in any such country. The various requirements in the copyright legislation of the United with respect to deposit of copies, registration, notice of copyright and, above all, the obligatory manufacture of the author's book within the United States, has prevented the entry of the United States into the Copyright Union up to the present time, — from 1887 to 1932.

A great many bills have been submitted to so amend the copyright legislation of the United States as to permit adherence to the Berne Copyright Convention, and, as already stated, one such bill was passed by one house of Congress in 1931, but failed to become law.

Notwithstanding this long fruitless struggle upon the part of friends of international copyright, there has been a distinct gain in the general and public opinion that this Country can no longer afford to hold back and should now enter the Copyright Union. Meantime once again a bill has been proposed with no amendments of our present copyright laws except such as are required to meet the provisions of the articles of the Berne Convention. This bill was introduced in the House of Representatives on May 31, 1933, by the Hon. Robert Luce (H. R. 5853) and in the Senate on June 6, 1933, by the Hon. Bronson Cutting (S. 1928) and was referred to the Senate Committee on Foreign Relations. It will come up for consideration and action in the next session of Congress. Its enactment would enable the President to submit to the Senate the Berne Convention of 1928 for its approval of the adherence of the United States, and would permit him to promulgate the entry of the United States into the International Copyright Union.

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Press, Censorship and Advertisement

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Edited by

Dr. Hans Leemann, Professor at Law at the Polytechnicum, Zurich, and **Dr. Paul Dienstag**, Amsterdam.

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REVIEW ARTICLE

HISTORY OF THE LEGAL DEPOSIT OF BOOKS THROUGHOUT THE BRITISH EMPIRE¹

In the development of the legal protection of literary property the following course of procedure may be noted: (1) insistence upon public registration of the name of the proprietor of the copyright (the author) together with the title of his work; (2) obligatory deposit of a copy or copies of the property to identify the work protected; and (3) insistence upon the compulsory deposit of books in order to build up national libraries. It is the history of this last movement throughout the British Empire which Mr. Partridge has so completely documented in his recent work.

His compact volume, with a Preface by Sir Frederic Kenyon, former principal librarian of the British Museum, is divided into three parts: I. "Great Britain and Ireland (including Scotland)"; II. "The Dominions and India"; and III. "Colonies, Protectorates, and Mandated territories." A list of documents and authorities consulted and an Index are appended.

The statutes consulted and quoted in part include Great Britain, 1640-1932; Australia (including the commonwealth, South and Western Australia, New South Wales, Queensland, Tasmania, and Victoria), 1827-1928; Canada, 1832-1931; India, 1847-1927; Irish Free State, 1927; Newfoundland, 1836-1926; New Zealand, 1903-13; Union of South Africa (including Natal and Transvaal), 1854-1916.

A study of Mr. Partridge's volume leaves an impression of general accuracy, but an error in the footnote on page 114 with respect to our ad interim copyright needs correction. The amendment of December 18, 1919, increased the period from thirty to sixty days within which one copy of an English book may be deposited to secure the extended interim term of four months. When this has been done, then, during this period, the book must be wholly manufactured within the United States, two copies must be deposited, and registration for copyright must be made in order to secure a continuing protection for the first term of twenty-eight years.

The history of the legal deposit of books . . . begins with the agreement between the Stationers' Company and Sir Thomas Bodley (founder of the Bodleian Library at Oxford) to supply to that library a free copy of every new book printed by members of the Stationers' Company.² Mr. Partridge traces the

¹ R. C. Barrington Partridge, *The history of the legal deposit of books throughout the British Empire*. London: Library Association, 1938. Pp. xvii+364. 18s. Post Free.

² This agreement was signed on December 12, 1610.

subsequent history of such book deposits in the great Oxford library and other university libraries and the British Museum to the present time.

This requirement of book deposits has been subject to many interesting mutations during subsequent years, all of which are scrupulously noted by Mr. Partridge. The deposit of copies in the Bodleian Library at Oxford under the early agreement with the Stationers' Company continued up to the Act of May 19, 1662. That Act required that three copies of all new books or reprints ("with additions") should be sent to the Stationers' Company and thereupon should be deposited in the British Museum and in the libraries of the universities of Oxford and Cambridge.

In 1706 the library of Sion College, London, was added to this list. In 1709 the first copyright law of Great Britain was enacted and by it were added the libraries of the four Scotch universities—Edinburgh, Glasgow, St. Andrews, and Aberdeen—and the library of the Faculty of Advocates, thus increasing the number of copies demanded to nine.

In February, 1737, a bill was introduced proposing to add to the previous list the following five London law libraries: Inner and Middle Temples; Gray's and Lincoln's Inns, and the Library of Advocates in Doctors Commons. This proposal failed to become law.

The (University) Copyright Act of 1775, complaining that the requirement of book deposits had been "eluded by the entry only of the title to a single volume," then enacted entry to be made of the whole book and every volume of it and the deposit of all nine copies was demanded. In 1801 two additional copies were required, one for Trinity College and one for King's Inns, Dublin.

In 1836 the requirement of deposit was repealed in the case of Sion College, London; the four universities of Scotland; and King's Inns library, Dublin. Payment of an annual sum as compensation for the loss of such books in the case of each library was proposed.

The "International Copyright Act" of 1838 provided for the copyright registration of English works first published in foreign countries and foreign works first published in the British Empire and the deposit of one copy to be sent to the British Museum. It was suggested that such deposited copies should also be required for the four other privileged libraries. But it was pointed out that in that case copies of English books published abroad might be demanded by foreign governments, and the proposal was dropped.

The Copyright Act of July 1, 1842, demanded the deposit of one of "the best copies published" for the British Museum and one copy of every book "demanded in writing" by the four other libraries, "upon paper of which the largest number of copies shall be printed for sale," these copies to be "free of expense." Failure to comply involved payment of the price of the book, plus £5.

The last British copyright revision of July 1, 1911, requires the publishers to deliver at their own expense to the British Museum a complete copy of the best edition of every book published in the United Kingdom. Also they must

deliver "upon written demand" made within twelve months after publication, one copy of any book desired by the libraries of Oxford, Cambridge, Faculty of Advocates (National Library of Scotland since 1925), Trinity College, Dublin, and, with reservations, the National Library of Wales, all copies to be of the edition of which the largest number has been printed for sale.

Ireland, on May 20, 1927, provided that one copy of all books published in Saorstát Eireann be deposited in the British Museum and in Trinity College and that three copies be deposited in the National University of Ireland. But the required deposit of all English books in Trinity College by the British Act of 1911 remains unrepealed.

The long continued contention about this demand for the deposit of copies, between the librarians on one side and the printers and publishers on the other, gave rise to a flood of controversial books and pamphlets, especially between 1807 and 1821. Librarians would find many of these works interesting reading. A list of titles is appended for their convenience.

The fundamental dispute involved in this matter of the obligatory deposit of copies has been the question of the rights of certain libraries to be supplied such copies without cost and the justice or equity of compelling authors and publishers to supply the copies at their own considerable expense. Sir Frederic Kenyon³ speaks of it as "a curious and certainly not uninteresting episode in the history of the dissemination of literary culture." Ascribing its origin to the "voluntary arrangement with the Stationers' Company," he points out that

it received legislative sanction as a means of securing the censorship of the Press and has been perpetuated as an incident or condition of the securing to authors and their publishers a title to the property produced by their brains, labour, and expenditure. . . . The censorship has long expired, and neither in logic nor in law is there any necessary connection between copyright and the compulsory deposit of books.

Mr. Partridge summarizes the matter as follows:

It would now be difficult satisfactorily to replace by any other plan a scheme whereby certain privileged libraries are regularly fed with a supply of new books at small expense to the nation, and whereby at least one copy of every possibly useful work is carefully preserved for the use of present day readers, as well as for its final evolution by posterity.

It might seem to authors and publishers, however, that too little consideration is here given to their constant and long continued protests at the serious burden unwillingly borne by them during so many years. Many of their arguments carry conviction and seem to prove the unreasonableness of the demand.

In the United States the deposit of copyrighted books has never attained the urgency so long evident in England, and it has never involved much con-

³ "Copyright libraries" in W. W. Bishop and Andrew Keogh (eds.), *Essays offered to Herbert Putnam* . . . (New Haven: Yale University Press, 1929), pp. 248-54.

troversy. But it is a matter which now demands attention, especially by librarians and publishers. A brief summary of our legislation with respect to the compulsory deposit of copies of copyrighted books may be stated. The earliest legal requirement for such book deposit in a library was made in the Colonial copyright enactment of Massachusetts on March 17, 1783. In order that every published book should become the sole property of its author, a deposit of two copies in the library of the "University at Cambridge" was required.

The first Federal Copyright Act of May 31, 1790, as well as the revision of February 3, 1831, required the deposit of one copy, the former within six months after publication; the latter within three months. The repository for the copies was the Department of State of the United States. The accumulation of deposited copies was, by the Act of February 5, 1859, transferred to the Department of the Interior, and under the provisions of the Act of July 8, 1870, all such deposits and all copyright records were removed to and placed under the control of the Librarian of Congress. Meantime, the Act of August 10, 1846, had provided that the author or proprietor of any copyrighted work should deliver one copy to the Smithsonian Institution and one copy to the Library of Congress. By Act of March 3, 1865, this demand for deposit in the Library of Congress was re-enacted and was fortified by authorizing the Librarian of Congress within a year to demand any article not deposited and if then not delivered within a month, "the right of exclusive publication secured to such proprietor under the Acts of Congress respecting copyright shall be forfeited." By the Act of February 18, 1867, this drastic and unjustifiable provision was eliminated, and there was substituted the more reasonable penalty of "twenty-five dollars, to be collected by the Librarian of Congress."

The Act of July 8, 1870, for the general revision of the copyright law (which became a part of the *Revised Statutes* of 1873) required that two copies of any book or other article should be delivered to the Library of Congress within ten days after publication; thus taking over the Smithsonian Institution's copy, as its collection of books had been permanently transferred to the Library of Congress. The Act of March 3, 1891, required the deposit of copies to be made "not later than the day of publication," while in our latest general revision of the copyright laws, March 4, 1909, section 12 declares that in the case of books

there shall be promptly deposited in the copyright office or in the mail addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, or if the work is by an author who is a citizen or subject of a foreign state or nation and has been published in a foreign country, one complete copy of the best edition then published in such foreign country.

This is the law in force at the present time.

The demand for the deposit of gratuitous copies of copyrighted books has been generally acquiesced in by the authors of such works and their American publishers, partly no doubt because the demand has never been for more than

two copies of each book. The printing by the Library of Congress of a title-card for each copyrighted work and the distributing of such cards to thousands of libraries has served to advertise the books and to direct the attention of librarians to them, thus stimulating sales. The card section of the library also has constantly checked up the book entries and has demanded copies of books claiming copyright where the copies required had not been deposited.

This situation may be changed, however, if American librarians should propose that a large number of copies of each book should be deposited by American publishers. A tentative proposal of this character was made by the well-known librarian, Samuel H. Ranck, in a letter to the *Nation*.⁴ He suggested that the present deposit of two copies in the Library of Congress should be supplemented "by at least one additional copy elsewhere," this third copy to be filed in the state in which the "owner" (author?) was resident. Mr. Ranck admitted that in some instances it would be a burden to the publishers, "but in the vast majority of cases a matter of no consequence."

A year later Mr. Ranck enlarged his suggestion.⁵ In addition to proposing that each state preserve "a copy of every work that is copyrighted by one of its citizens," he suggested the establishment of additional complete copyright depositories in Chicago, New Orleans, Denver, and San Francisco, and the deposit therein of one copy of every copyrighted work, making six copies in all by legal requirement at the expense of the author or publisher.

A more recent proposal of this character is contained in H.R. 3699, introduced in the Seventy-fifth Congress, First session, on January 26, 1937, by Ross A. Collins, of Mississippi. His bill was referred to the Committee on the Library. It has not been reported by that Committee. His project is ambitious, viz., the establishment of five regional national libraries to be located at New York, Memphis, Chicago, Denver, and San Francisco, to be "the property of the United States." These five libraries as proposed are to be the depositories of two bound copies of all Senate and House of Representatives documents and public reports; House and Senate journals; all bills and resolutions in Congress in each parliamentary stage; the *Congressional record*; the *United States code and supplements* and *statutes at large*; the "Official Register" and the *Decisions of the Supreme Court*.

The bill authorizes the president to name, with consent of the Senate, five regional librarians for life at a salary of \$9,000 each. Fifty million dollars would be appropriated to buy ground and build five suitable structures to house the collections, \$50,000 to be available immediately for each library for salaries, equipment, etc.

Concerning copyright, the bill declares that "to insure the greater safety and better preservation of the United States Copyright deposits," section 12 of the Copyright Act of March 4, 1909, "is hereby amended so as to provide

⁴ October 4, 1894, p. 247.

⁵ "Need of additional copyright depositories," *Library journal*, XX (1895), 43-45.

that twelve complete copies be deposited with the Register of Copyrights instead of two of any copyrighted works which may be the subject matter of copyright as provided for in section 5, paragraphs (a) and (b) of the said Copyright Act of 1909." Of these twelve copies, two are to be immediately turned over to each of the five regional libraries. No deposit is required if the published edition of the work does not exceed three hundred copies and the published price exceeds fifty dollars. The requirement of the deposit of twelve copies is confined to the classes of copyright works enumerated in paragraphs (a) and (b) of section 5 of the Act of March 4, 1909; (a) comprises "books, including composite and cyclopaedic works, directories, gazetteers, and other compilations"; and (b), "periodicals, including newspapers." That section, however, enumerates thirteen other classes of copyrighted works, and for all these deposits are demanded. Why all these have been excluded from the proposed regional libraries is not explained. Among them are works of importance and works of which a large number are deposited, for example, musical compositions, dramatic works, and motion pictures. The printed catalog of dramas registered for copyright from 1870 to 1916 includes more than fifty-six thousand titles. This bill is no longer before Congress; it must be reintroduced, and with changed text if desired.

APPENDIX

BOOKS RELATING TO THE OBLIGATORY DEPOSIT
OF COPIES UNDER COPYRIGHT LAW

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THORVALD SOLBERG

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Mr. John Russell Young died Jan. 17, 1899, and promptly a horde of applicants (but with hardly a single trained librarian) applied for his position. Being asked for a statement on the Library of Congress, I submitted the following which was printed in *The Nation* on March 9, 1899.

THE LIBRARIANSHIP OF THE LIBRARY OF CONGRESS.

The present is a critical moment in the history of the Library of Congress, which is without an executive head. The man who shall finally be appointed to this responsible position will affect the Library, for weal or for woe, for a long generation. Even under ordinary conditions the responsibility of this appointment would be great, but there are peculiar circumstances connected with the librarianship at this time which make the situation unusually grave, and which demand the most serious consideration.

On the 30th of June, 1897, the Library of Congress consisted of a collection of books, maps, and such art works, engravings, etc., as had been received through the operation of the copyright law, crowded into inadequate quarters in the Capitol, with a staff of forty-two people, consisting simply of a chief and his clerks; the force being practically without organization. On January 1, 1898, six months later, the Library found itself spread out in its new, palatial quarters on Capitol Hill, covering acres of ground, with a force, besides the Librarian, of one hundred and thirty-two people, divided by legislative enactment into nine departments under subordinate heads. While the material part of the Library was thus promptly housed in one of the solidest structures in the United States, the library organization itself, formed only to the extent of filling the places provided by Congress, was like a huge, inflated balloon wobbling about in mid-air until those numerous anchor lines which true organization require should have been attached to its firm, material base and drawn properly taut. The last six months of 1897 (the first six months of the reorganization of the Library) were consumed in making the new appointments required by the act of reorganization and in removing

the collections into the new building—two difficult tasks, the proper execution of which would have fully justified this amount of time. Since that period more than a year has passed; and with a view to a correct understanding of what will devolve upon the new Librarian, it is desirable to state frankly what the situation is at this moment.

The late Librarian failed to adjust the elaborate and intricate organization to the great structure, and, although nineteen months have elapsed since the reconstitution of the Library, the departments, with the exception of the three principal ones, have not even been located, and, excepting the reading-room and to some extent the Copyright Office, none is settled and fully equipped for its work, but is, as it were, merely camping in some one of the magnificent halls of the Library building, with such temporary fittings and furnishings as could be obtained. Here, then, is one important task awaiting the new Librarian.

Of necessity, the act reorganizing the Library was drawn in advance of the removal to the new building, and without the aid of the knowledge which is gained only by experience in administering a large library on modern lines. It is consequently noticeably deficient in some directions. Salaries were provided for positions which are still non-existent, and some of which are likely to remain so; while other positions which a trained librarian, experienced in handling a library of parallel importance, would at once have seen to be absolutely necessary, were omitted altogether. The act referred to provides for a librarian and a force of 132 clerks. The duties of the librarian, besides the proper general supervision, involve the expenditure of all moneys appropriated for the purchase of books and supplies; and yet there was no pro-

vision for so important an adjutant as a "chief clerk." This defect has been made good only in this year's appropriations. The act failed to make any provision for an order and supply department. Every librarian of experience knows the importance attaching to this division of a library, and how great is the necessity for its proper equipment. But this necessity is especially great in the case of the Library of Congress because of the arrears in the book-purchasing, which will require special efforts in order that the lamentable gaps in the collection shall be made good. It should be remembered, also, that, as the copyright law provides the Library with copies of the ordinary current publications, the buying must be largely of foreign books, and must be supplemented by well-devised and intelligently carried-out methods for filling up gaps in the equally important classes of literature not obtainable by purchase. In other words, this department of the Library should be one of weight, with a well-instructed, competent man at its head, supported by an adequate clerical force.

At present, the serious difficulties due to inadequate provisions for administration, such as we have cited, are met as best they can be by extemporized and unsatisfactory expedients. The incoming librarian must face the difficult problem of carrying on this great institution with an ill-adjusted and insufficient clerical equipment, until he can clearly formulate the urgent necessity of the Library in these particulars, properly present the same to Congress, and obtain provision for its administration commensurate with its needs. It is to be borne in mind that the Library, so far as its collection of books, maps, engravings, newspapers, and music is concerned, stands first of all the libraries in the country, while in its provisions as to administration it is probably behind the half-dozen leading municipal libraries in the United States.

But, serious as are the problems outlined above, the new incumbent will be met by yet another even more grave

and fundamental, and which should be dealt with at the start if justice is to be done to the work of the Library, or true success secured for himself as its executive head. As yet, no comprehensive, coherent scheme of administration for the Library seems to have been applied or even framed. The result is, that there is neither the coördination nor the cohesion desirable in the different divisions of the Library, nor do they make a homogeneous whole or intelligently cooperate with one another. As a consequence, there is waste by reason of duplication of work and because the different departments work toward diverse ends. This is probably not from want of desire to cooperate, but simply because no general plan of work has been established so that each division of the Library has its understood part, and the work accomplished in any one department adds to the general advancement of the whole. No satisfactory result can be obtained in the long run without some such comprehensive scheme of administration; and it is clear that the new librarian will need to devise one first of all.

In doing this he will encounter his most serious difficulty. We have already referred to the inadequacy of the force, but this is exhibited even more in quality than in quantity. The selection of the present heads of departments in the Library of Congress was undoubtedly conscientious; but, as a consequence of giving way to the strong political and social pressure brought to bear in behalf of incompetent or otherwise disqualified clerks in subordinate positions, these executive heads were left without proper material. The evil is not to be measured simply by the number of incompetents. The method of appointment instills an insidious poison which in time contaminates the whole force, rendering discipline practically impossible, and inevitably leading to disaster.

INTERNATIONAL COPYRIGHT IN CONGRESS, 1837-1886.¹

THEORVALD SOLBERG

[REPRINTED FROM THE PROCEEDINGS OF THE AMERICAN LIBRARY ASSOCIATION, MILWAUKEE CONFERENCE, JULY, 1886, AS PRINTED IN THE "LIBRARY JOURNAL."]

THE earliest movement in the direction of International Copyright in the Congress of the United States was the presentation to the Senate, by Henry Clay, of Kentucky, on Thursday, the 2d of February, 1837, in the 2d session of the 24th Congress, of an "Address of certain Authors of Great Britain." This memorial bears fifty-six signatures, the name of Thomas Moore coming first, and including among the other signers, the poets, Thomas Campbell, Robert Southey, and Samuel Rogers; the novelists, Bulwer, G. P. R. James, Maria Edgeworth, and Miss Mitford; both the D'Israeli's, Henry H. Milman, Henry Hallam, William and Mary Howitt, Mrs. and Mr. S. C. Hall, Mrs. Mary Somerville, Miss Martineau, and Thomas Carlyle. The complaint made in this "Address" is that, for want of a law securing to the authors of Great Britain the exclusive right to their respective writings in the United States, injuries have been inflicted, not only upon their property but on their reputation, and on the interests of literature and science; which, the memorialists think, "ought to constitute a bond of union and friendship between the United States and Great Britain." The profits arising from sometimes extensive sales of their works are appropriated by American booksellers, and, besides, their works are liable to be mutilated and altered at the pleasure of the booksellers, or of any other persons

who may have an interest in reducing the price of the works, or in conciliating the supposed principles or prejudices of purchasers, while, the authors' names being retained, they are made responsible for works which they no longer recognize as their own. Such mutilation has been actually perpetrated, and the authors have no redress. It is pointed out that American authors are injured, because, the unjust, free appropriation of English works being open to the publishers, they are under no inducement to afford to American writers a fair remuneration for their labors. As a proof of the evil complained of the petitioners cite the case of Walter Scott, and claim that an equitable remuneration from American publishers might have saved his life, and would, at least, have relieved its closing years from the burden of debts and destructive toil. The "Address" closes with the following petition: "That, deeply impressed with the conviction that the only firm ground of friendship between nations is a strict regard to simple justice, the undersigned earnestly request the Senate of the United States in Congress assembled, speedily to use, in behalf of the authors of Great Britain, their power of securing to the authors the exclusive right to their respective writings." Mr. Clay, upon presenting the document, said: "I am quite sure, Mr. President, that I need not say one word to commend this address to the attention and friendly consideration of the Senate, and every member of it. Of all classes of our fellow-beings, there is none that has a better right than that of authors and inventors to the kindness, the sympathy, and the protection of government. And surely nothing can be more reasonable than that they should be allowed to enjoy, without interruption, for a limited time, the property created by their own

¹The writer is glad to use this opportunity to publicly acknowledge and return his thanks for friendly assistance received from Mr. Amzi Smith, Superintendent of the Senate Document Room; Mr. Thomas M. McKee, of the same office; Mr. G. M. Weston, and Mr. A. W. Church, of the Senate Library; Mr. Fernis Finch, File Clerk of the House of Representatives; Mr. John G. Ames, Superintendent of Documents, Department of the Interior; Mr. David Fletcher of the Library of Congress; and Mr. R. R. Bowker.

genius. . . . When we reflect what important parts of the great republic of letters the United States and Great Britain are, and consider their common origin, common language, and similarity of institutions, and of habits of reading, there seems to me to be every motive for reciprocating between the two countries the security of copyrights. Indeed, I do not see any ground of just objection, either in the Constitution or in sound policy, to the passage of a law tendering to all foreign nations reciprocal security for literary property." Mr. Clay, in conclusion, moved that the memorial be printed and referred to the Committee on the Library. Upon this Mr. William C. Preston, of South Carolina, while admitting the general propriety of the reference to that committee, said he thought the subject one of some difficulty, because the American authors upon the one side would necessarily favor the measure, while the publishers had an opposite interest, and had arrayed themselves against the object of the memorial, and the subject, therefore, resolved itself into a complicated question of free-trade and protection of the mechanical arts. On this subject Mr. Preston was not then prepared to decide. "Great Britain," he continued, "had two authors to our one, and was, therefore, more interested in the protection of mental labor; while the United States published three or four times as many books, and, therefore, more interested in protecting publishers." He concluded that the subject ought to go to the Judiciary Committee. But Mr. Grundy, of that committee, said it had already as much before it as could be properly performed, and suggested a select committee of five. Mr. Calhoun, of South Carolina, made a few remarks to the effect that while aware the interests of booksellers in the United States were adverse to the object petitioned for, he did not suppose that it was of a character or nature such as required its rejection. The works for which copyrights would be secured constituted but a small portion of the entire literature of Great Britain; and of the works of the distinguished names on the memorial, the copyright of a great portion had expired, which was, therefore, subject to free publication. The proper committee, he thought, was

that of the judiciary; but he would not object to a select committee. Mr. Buchanan, of Pennsylvania, felt called upon to say something in defence of the interests of the reading people of the United States. He thought that when the question came to be considered it would be a vexed and difficult question. The effect of granting copyrights would be that the authors who were anxious to have their works appear in a more expensive form would prevent the issuing of cheap editions, "which were now published and sent all over the country, within the reach of every individual," and the result would be the reduction of republication to one-half. "But to live in fame," the senator concluded, "was as great a stimulus to authors as pecuniary gain; and the question ought to be considered, whether they would not lose as much of fame by the measure asked for as they would gain in money." It was well to ascertain also, "what would be the effect on the acquisition of knowledge in this vast country." Mr. Grundy's motion, however, was carried, and Senators Clay, Preston, Buchanan, Webster, and Ewing, of Ohio, were appointed to compose the select committee. On February 13th Mr. Cambreleng, of New York, presented the address of the British authors to the House of Representatives, without remark. It was referred to the Committee on the Judiciary, but no further action was taken in the House in regard to it, except to order it to be printed.

Two days later than the proceedings in the Senate, Mr. Clay presented a list of additional names of British authors, which by mistake had been overlooked, but which was now referred to the select committee, and at his request the "Address" was ordered to be printed. On behalf of the committee Mr. Clay, also, moved the appointment of an additional member, upon which Mr. Ruggles, of Maine was appointed. On the same day Senator Clay presented the "Memorial of a number of citizens of the United States, praying an alteration of the law regulating copyrights," which was also referred to the select committee on this subject. This is really the petition of the American authors, and has thirty signatures, including Longfellow, Prof.

Felton, the eccentric John Neal, Rufus Dawes (the now hardly remembered Boston poet), William A. Duer, Dr. McVicker, and George P. Morris. The number of Philadelphia names is noticeable: Robert Montgomery Bird, Willis Gaylord Clark, Robert Morris, George Mifflin Wharton, H. Biddle, T. K. Wharton, and others. The names of a number of the then prominent journalists are also found appended to this petition, which first represents that the signers believe, "Native writers to be as indispensable as a native militia; that, although foreign writers and foreign writings may be had *cheaper*, owing to the present law of copyright, our people must look, for the defence of their habits, their opinions, and their peculiar institutions, to those who belong to them, and have grown up with them,—to their own authors, as to their own *soldiers*." Second, owing to the want of an international copyright law, American authors are not able to contend with foreigners; therefore, the memorialists pray, "that such changes may be had in the present law of copyright, as, while they ensure to authors a safer interest in their property, to our own writers encouragement, and to foreigners a reasonable protection, the public may be secured against a discouraging monopoly, the commonwealth of literature open to a fair and liberal competition, and the groundwork laid for a future international law of copyright between the Old World and the New." On February 16th, Mr. Clay, from the select committee, submitted to the Senate a report, accompanied by a bill to amend the copyright act. It was ordered that the report (which it is safe to assume was drawn up by Mr. Clay) should be printed, and one thousand additional copies sent to the Senate. According to this report, it is incontestable, "that authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius, . . . and that this property should be protected as effectually as any other property is, by law, follows as a legitimate consequence." . . . Furthermore, "It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated." . . . "We

should be all shocked," continues the report, "if the law tolerated the least invasion of the rights of property, in the case of merchandise, whilst those which justly belong to the works of authors are exposed to daily violation, without the possibility of their invoking the aid of the laws. The committee think that this distinction in the condition of the two descriptions of property is not just; and that it ought to be remedied by some safe and cautious amendment of the law." This being the first measure proposed to Congress upon this subject, the *constitutionality* of any proposed law was naturally a matter of consideration. As the reasoning presented in the report is in some respects noticeable, and, as it has subsequently been repeated, the paragraph is quoted:—

"With respect to the constitutional power to pass the proposed bill, the committee entertain no doubt. The Constitution authorizes Congress to 'promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.' There is no limitation of the power to natives or residents of this country. Such a limitation would have been hostile to the object of the power granted. That object was to *promote* the progress of science and useful arts. They belong to no particular country, but to mankind generally. And it cannot be doubted that the stimulus which it was intended to give to mind and genius—in other words, the promotion of the progress of science and the arts—will be increased by the motives which the bill offers to the inhabitants of Great Britain and France."

The bill which the committee asked leave to introduce was the first international copyright bill presented to Congress, and was entitled: "A bill to amend the act entitled 'An act to amend the several acts respecting copyright.'" It enacted—briefly stated—the extension of the provisions and benefits of the domestic copyright law then in force (the act of February 3, 1831) to works by the authors of Great Britain and Ireland, and France, published subsequently to the passage of the act; provided, a printed copy of the title of the book was deposited, and the other requirements of the domestic law complied with, and an edition of

the work was printed and published in the United States simultaneously with its issue in the foreign country, or within one month after depositing the title. The bill was read twice without debate.

February 20th, Mr. Clay presented to the Senate the "Memorial of G. Furman and other public writers," and also the "petition" of the professors of the University of Virginia. It was ordered that they lie upon the table and be printed. The first document, which has 154 names attached, mainly residents of New York City, sets out that the petitioners "have long viewed with regret the existing law of copyright in the United States, as inconsistent with the spirit of the age, the diffusion of sound knowledge, the interests of American writers, and the rights generally of literary property." The petition enlarges upon what is termed the "total indifference to the rights of literary property," and questions whether the shadow of a reason can be adduced in support of the exception of this kind of property from legal protection, and closes by praying the passage of an international copyright law with Great Britain. The nine professors of the University of Virginia say that they have "long felt and lamented the inadequacy of the law of copyright in the United States, to give that encouragement to the literature and science of the country which its patriotic framers intended, inasmuch as our publishers are neither willing nor able to pay the American author for his labors (except in a few special cases), so long as the productions of British authors can be republished here free of charge," and they represent "that an individual has as just a claim to remuneration from those who profit by his literary labors, as from those who profit by any other species of his industry." They therefore ask for a change in the law, and suggest that if Congress "should think the greater cheapness of the current British literature is not to be disregarded," the privilege asked for might be extended to British authors for a shorter term than that which is given to American citizens. This agitation, however, produced no effect upon Congress which resulted in action. In the second session of the following Congress, December 13, 1837, Mr. Clay again

introduced his bill, without alteration, and it was now referred to the Senate Committee on Patents and the Patent Office. But this movement brought down upon the Senate a flood of memorials and petitions against the passage of the bill, and they were also referred to the same committee. Noticing only such as were ordered to be printed, the first of these, in chronological order, presented by Mr. Buchanan, January 15, 1838, was the memorial of a number of "citizens" of Philadelphia, who oppose the bill upon the ground that its passage "would be productive of the most deleterious consequences to a very important branch of the national industry," meaning thereby, the book-making establishments, of which a great portion, it is claimed, would be paralyzed upon the bill becoming law. A pathetic picture is drawn of the prospective misery of the work-people thus thrown out of employment, which would be poorly compensated for, as the petitioners put it, "by any display of ultra sympathy towards those who stand in no need of it." The possible effect of a copyright law upon the price of the honestly printed book is regarded with dismay, and Congressmen are entreated to consider how it would affect their constituents, — "the honest farmers with their interesting families," — who, instead of receiving their literary supplies at a rate "almost too trifling to mention," would have to buy at a tenfold cost. On the same day this memorial was presented by Mr. Toland, of Pennsylvania, to the House, and it was printed in the documents of both chambers.

On February 13th Mr. Norvall, of Michigan, presented the "Memorial" of the Columbia Typographical Society, of the city of Washington, which is signed by George C. Smoot, President. This document is short and to the effect that the passage of the bill will prove, in the opinion of the memorialists, "the immediate destruction of the book-printing business of the United States; and the consequent impoverishment of the thousands dependent on this branch of industry . . . ; will greatly enhance the price, and limit the circulation of literature, — confining it to the wealthy alone; in fact, in every view, hostile to the interests of our country, without being calculated to

promote a sale of American authors' works, expected from its passage." The New York Typographical Society also sent a document of considerable length, signed by its president and secretary, and presented to the Senate on March 13th, by Mr. Wright, of Massachusetts, and ordered to be printed. The main effort of the memorial is to show, as the petitioners put it, that "the most injurious tendency of this bill will be that of causing books to be manufactured in England that are now printed in this country;" but, when it is remembered that one of the provisions of the bill necessitated the printing of all copyrighted books in this country, it is difficult to see how this could follow. Mr. Buchanan, on March 19th, presented the "Memorial of Peter S. Du Ponceau and others, praying Congress to appoint committees of inquiry on the subject of copyright, and to await their report before acting on the subject," which was laid on the table, and ordered to be printed; but, subsequently, on March 29th, upon a motion to that effect, it also was referred to the Committee on Patents. This neutral petition, it may be noted in passing, contains, among its signers, the names of some who subscribed to the first petition, of February 4, 1837, asking the passage of a copyright bill. On the 10th of April, also, Mr. Buchanan presented to the Senate what purports to be the "Memorial of Richard Penn Smith and others, against the passage of the bill to establish an international copyright law," but this is (word for word) the petition presented by him on January 15th, with another list of 114 signers attached. It consequently is twice printed in the documents of the same session of Congress.

While in the House (where petitions for and against had been introduced in the early part of this year), a memorial from the booksellers of Boston was presented by Mr. Fletcher, of Massachusetts, April 16th. This was ordered to lie on the table, but was printed in the House documents for the 2d session of the 25th Congress. The memorialists consider the request contained in the "Address" of British authors as unseasonable, because, in the words of the memorial, "the law of

copyright in Great Britain, as it stands at present, contains no express provision for the protection of any but British authors; its protection to foreigners, if any, is wholly constructive. . . . When Great Britain shall have opened her doors to our authors, then, it would seem, a more fitting occasion would be presented for entertaining a proposition to extend to her authors a like courtesy in the United States." It might, perhaps, be taken as indicative of some growth in free-trade notions, that the strivers for a protection measure in the national Legislature nowadays are so averse to seeing it properly labelled, for in 1838 there was manifested no hesitation in publishing a desire for as much protection as could be secured. So the Boston booksellers, in their memorial, say, that "in order to the protection of our own manufactures and industry, for which we are mainly solicitous, and on which depend our means of subsistence, we conceive that the following provisions should be clearly and explicitly set forth in the proposed law:" 1. The act shall not apply to books printed prior to its passage, nor to subsequent editions of such works; 2. The American edition to appear simultaneously with foreign issue and within one month after deposit of title; 3. The work to be wholly manufactured in this country; 4. Copyright claim to be printed on back of title; and 5. The privileges of copyright to be reciprocal. On the 21st of May, Mr. George W. Toland, of Pennsylvania, presented four petitions from Philadelphia against international copyright, and Mr. W. B. Calhoun, a member of the House from Massachusetts, presented, June 4th, a petition from inhabitants of that State remonstrating against international copyright. The latter was ordered to lie on the table, and to be printed; but in printing the signatures were omitted. The Massachusetts memorialists think the passage of Mr. Clay's bill "would be unjust, impolitic, and hostile to that general diffusion of intelligence among the people which is the best safeguard of our republican institutions"—unjust, they think, to the American book-manufacturers, and impolitic in giving foreigners emoluments to which they are not fairly entitled. They claim also that an inter-

national copyright law would have a retrospective operation and impair the obligation of contracts, by giving copyright to new editions of English works already prepared at large expense by American publishers for the American book market. The "Address" of British authors is criticised by the petitioners in several respects. Meanwhile the friends of the measure became active. On March 19th Mr. Toland presented to the House of Representatives a petition from citizens of Philadelphia praying the passage of an international copyright law, and April 24th, Senator Rives, of Virginia, and Mr. Clay, presented to the Senate petitions from Boston and New York of similar import, and Mr. Preston the memorial of W. Marshall & Co., and others, of Philadelphia, also favorable. The Boston petition, which is headed by Edward Everett, and contains, among the remaining 78 signatures, the names of Samuel A. Appleton, George S. Hillard, C. C. Felton, Willard Phillips, John Brooks Fenno, Nathaniel Greene, William Beach Lawrence, and George T. Curtis, favors the proposed measure because it is held essential to the encouragement and development of American literature, and because, in the words of the petitioners, "it is demanded, with much propriety, as an act of justice by the principal foreign authors interested. . . . The plea of the British authors appears to us to be founded in the plainest principles of justice. Our law already recognizes the right of native citizens to hold and transfer literary property as fully as it recognizes the right of transferring any other species of property. We cannot well conceive why a foreign author should not have the same liberty and right to consign or transfer literary property to his agents in this country that a foreign merchant has to transfer and consign his merchandise. . . . Is not the distinction palpably unjust and impolitic? . . . In conclusion, your petitioners would respectfully urge that they consider the proposed measure as demanded by a due respect for the principles of justice founded in the use of a common language, by a sense of enlightened national reciprocity, and by the great literary interests of both countries."

The New York petition bears 136 signatures, including such well-known names as Henry Ogden, John McVickers, Charles Anthon, Theodore Sedgwick, Jr., William A. Duer, and Cornelius Mathews. Also may be

noted the name of Grenville A. Sackett, who is reputed to be the author of the first independent work published in this country upon the subject of international copyright, namely, the anonymous pamphlet, published in 1838, under the title "A Plea for Authors," etc. The copyright law of the United States, according to this memorial, "is an anomaly in civilized legislation," and "the effect of limiting the protection of copyright to citizens or residents is as impolitic as it is unjust. . . . This measure (virtually an international copyright law) is not only demanded by a just regard to the property of foreign writers but is imperatively required for the advancement of our own literature."

The memorial introduced by Senator Preston as from Philadelphia is word for word the Boston petition above, signed by publishers, booksellers, authors, and others. On this same day, also, upon the motion of Senator Rives, the petition of the professors of the University of Virginia, sent in to the Senate during the previous Congress, was also referred to the Committee on Patents. This petition, it will be remembered, was favorable to an international copyright law. A second Philadelphia petition, "praying the extension of the advantage of copyright to all native or foreign residents or non-residents," was presented by Mr. Toland to the House on May 21st, and was referred to the Committee on the Judiciary, and printed. Its text is the same as that of the memorial presented to the Senate by Mr. Preston on April the 24th, having doubtless a different list of signatures; but in printing the names of the signers have been omitted.

By this time the Senate Committee on Patents, to whom these various memorials had been referred, evidently thought they had accumulated literature enough, both *pro* and *con*, and they hastened to make a report, which was submitted by Senator Ruggles June 25th, and was adverse to the passage of Mr. Clay's bill. The committee, in this report, decline to discuss the question of authors' natural rights of literary property, thinking it sufficient that their works are protected by domestic law, and claiming further, that "international copyright, in strict sense, has no existence." They seem

to have discovered also that the British authors, in making their petition, entertained the sinister purpose of monopolizing the American market for their works, to the destruction of the book-manufacturing interests of the country; and as to the complaints (which had repeatedly, and in strong language appeared in the memorials) of the ill effects of free republication of foreign works upon the growth and development of American literature, the committee treat them as though they were but the screen for the home authors' greedy desire for higher prices for their own works; and concerning the competition with foreign books, they doubt its existence to any degree, and in any case consider it as "far from undesirable," and "they are, therefore, persuaded that the benefit of such a law would inure principally to foreign publishers and manufacturers, to the great discouragement of our own, and that authors on either side of the Atlantic would derive much less advantage from it than might at first view be apprehended."

Senator Clay, however, was not disconcerted by this adverse report on his bill, and promptly, in the next session of the same Congress, on Dec. 17, 1838, he brought in his bill for the third time, and it was now referred to the Committee on the Judiciary; and on December 19th, upon his motion, it was ordered that the several memorials and petitions on the files of the last session should be referred to the same committee. But on March 1, 1839, before any report had been made, Senator Wall requested that this committee be discharged from the further consideration of these petitions, etc., which was granted.

Determined to keep the matter before the Senate, Mr. Clay, on the 6th of January, 1840, presented his bill for the fourth time, when it was referred to the Committee on the Judiciary of that Congress, from which committee it was promptly returned to the Senate two days later, with the report that they neither recommended nor approved of the passage of the bill. On the 15th of April, however, the Senate, as in Committee of the Whole, proceeded to consider the subject; but for some, doubtless, good reason, which is, however, not set out in the journals of Congress,

Mr. Clay requested that further consideration of the bill be postponed to the 23d instant, and then be made the order of the day, which was agreed to; but it failed to get a hearing on that day, not obtaining consideration again until Friday, July 17th, upon which unlucky day it was ordered to lie on the table.

A second wave of copyright agitation was set in motion during this year, 1840. Dr. Francis Lieber published a letter, addressed to Senator Preston, on International Copyright, and Dickens's visit to this country in 1841 increased the agitation to a flood-tide; whereupon Mr. Clay, in the following session of Congress, on the 6th of January, 1842, again obtained leave to bring in his bill, which was a third time referred to the Committee on the Judiciary. No report was made; but we learn, from the record of the Senate proceedings of May 11 (upon which day Senator Preston asked Mr. Berrien, chairman of the committee, what had become of the bill), that Mr. Clay had inquired some time previously as to the committee's views upon the bill, and learning that an adverse report was determined upon, he had requested that the latter should be delayed for the purpose of getting further testimony, evidently feeling that *no* report was preferable to an adverse report. Meanwhile the lukewarmness of the Senate had led the friends of the measure to look to the House of Representatives in hopes of producing some result there, and on March 14, 1842, a petition by Washington Irving and twenty-four others was presented by Mr. Edward Stanly, of North Carolina, and referred to a select committee of five members, consisting of Mr. John P. Kennedy, of Maryland; Mr. Robert C. Winthrop, of Massachusetts; Mr. John H. Brockway, of Connecticut; Mr. John McKeon, of New York, and Mr. Benjamin G. Shields, of Alabama.

April 12, 1842, in answer to a request from the House, made (the 7th of April) upon motion of Mr. McKeon, the President transmitted to the House the correspondence between Lord Palmerston, British Secretary of State for Foreign Affairs, and the United States minister in London, of March 6 and 8, 1839, enquiring whether our Government was

then disposed to enter upon a reciprocity copyright treaty. This correspondence was referred to the select committee on International Copyright, and was printed.

June 13, 1842, Mr. Toland presented to the House, and Mr. Buchanan to the Senate, the memorials of C. Sherman, and of T. & J. W. Johnson (the well-known Philadelphia law-book publishers) urging the inexpediency of an international copyright law. They were referred to the respective judiciary committees. Senator Buchanan, in presenting the petitions, said that they contained a brief and conclusive argument against the passage of an international copyright law, and that he was happy to learn that the Committee on the Judiciary were also unanimously against the adoption of any such law. His motion to print the memorial of T. & J. W. Johnson was referred to the Committee on Printing, and was favorably reported on June 15th. This last memorial from Philadelphia does not differ in tenor from previous ones from that quarter "A man is entitled to the fruits of his labor, physical or mental; but what these fruits shall be must be determined by a regard to the general good. . . . The argument of justice to authors, in favor of an international copyright law, is valid only so far as it may coincide with the good of the whole. . . . The whole question is one of policy, and is simply this: will it benefit the nation, all things considered? . . . All the riches of English literature are ours. English authorship comes free as the vital air, untaxed, unhindered, even by the necessity of translation, into our country; and the question is, Shall we tax it, and thus interpose a barrier to the circulation of intellectual and moral light? Shall we build up a dam, to obstruct the flow of the rivers of knowledge? . . . Shall we refuse to gather the share of this harvest, which Providence, and our own position, makes our own?" So runs this writ. It is assumed as beyond question, that the American public, rather than pay the small percentage additional needed to acquire from the English author the honest right to the use and benefits of these riches, would suffer the "drying up of such fountains of light." The American author is relegated to the great work of popularizing knowledge, which is otherwise explained to be adapting English works to American wants and wishes, and it is suggested, as a point of vital import, that the passage of an

international copyright law would prevent such free and uncontrolled use of the foreign authors' works. A strong sidelight is thrown upon this document by recollecting that the authors of it occupied the position of law-book publishers, having a long list of publications, nearly the whole of it being the titles of *English* law books, and that they were at the time issuing a series entitled the "Law Library," containing 104 volumes, embracing 185 distinct English works, and including not a single book by an American author.

The session of Congress came to an end before the select committee of the House had taken any action, and in the next, the 3d session of the 27th Congress, this committee was, on motion of Mr. Kennedy, revived, Mr. Caleb Cushing being substituted for Mr. Shields. Dec. 14, 1842, on request of Mr. Kennedy, the memorial of Washington Irving, presented to the House on March 14th, was transferred to the new committee; and on motion of Mr. Cushing it was resolved that this committee be empowered to consider of the propriety of amendments generally in the existing law of copyright, and to report by bill or otherwise. For some reason not set forth the committee made no report.

January 18, 1843, it was resolved, upon request of Mr. Charles J. Ingersoll, of Pennsylvania, that the Committee on the Judiciary of the House be instructed to inquire whether the copyright laws might be amended, and to report accordingly. No report came from that committee upon this subject.

The next international copyright movement was again in the Senate, where Mr. Choate, in the 1st session of the 28th Congress, Dec. 15, 1843, presented a memorial from American publishers, which was referred to the Committee on the Judiciary, and the motion to print having been submitted to the Committee on Printing, was favorably reported on December 18th. But in the *interim* Mr. John Quincy Adams had presented the same petition to the House on the 16th inst., and as it thus reached the printer first from that branch of the Legislature it will not be found in the Senate documents, but in the Executive Documents of the House. The tenor of this important document is most

readily ascertained by the following quotation: "Your memorialists, deeply interested, not only as booksellers in particular but also as American citizens in general, in the greatest possible diffusion of knowledge and sound literature, are fully convinced, by their experience as traders in books, that the present law regulating literary property is seriously injurious both to the advancement of American literature and to that very extensive branch of American industry which comprehends the whole mechanical department of book-making. It is alike injurious to the business of publishing, and to the best and truest interests of the people at large. Your memorialists, after a careful and mature consideration of the important subject, are fully satisfied that the great interests of knowledge, of the industry of those who provide the community with reading, and of the vast reading community itself, would be most essentially promoted by the passing of a law which would secure to the authors of all nations the sole right to dispose of their compositions for publication in the United States (whether they may be published in foreign countries or not); provided, always, the book be printed in the United States within a certain time (to be settled by law) after its publication in a foreign country; and provided, also, that the copyright for this country shall be transferable from the author to American resident publishers only. Your memorialists are satisfied that this equitable protection would enable the publishers to furnish their fellow-citizens both with foreign and American literature in such forms and at such prices as would truly meet the wants as well as the means of the people; while the writers of books would receive the just compensation for their labor and talent wherever their works may be read." Finally the memo-

rialists petition Congress to enact a law securing to foreign authors, of such countries as may reciprocate the privilege, the right to dispose of their works to American publishers to be printed in this country. This document is signed by twenty-three publishers and booksellers, five printers, and seven binders, of New York, including among the first class the then important houses, D. Appleton & Co., Bartlett & Welford, Alexander V. Blake, Robert Carter, Francis & Co., and John S. Taylor & Co.; twenty-two publishers of Boston, including T. H. Carter & Co., Crocker & Brewster, Samuel G. Drake, W. D. Ticknor & Co., and Lewis & Sampson; eighteen booksellers and publishers of Philadelphia, including George S. Appleton, J. B. Lippincott & Co., and A. S. Barnes &

Co., besides twenty-two booksellers from Hartford and other places, — ninety-seven signatures in all. No action was taken by the Committee on the Judiciary of the Senate upon this memorial; while in the House a vote rejected its reference to the Committee on the Library, and referred it to a select committee of nine members, — Messrs. Winthrop, Adams, C. J. Ingersoll, E. J. Black, Reuben Chapman, Her-rick, Leonard, Bowlin, and Potter, of Ohio.

Mr. Winthrop, of Massachusetts, on Monday, Jan. 15, 1844, presented a memorial of Nahum Capen, of Boston, which was referred to the select committee, and on Friday his motion was agreed to by the House to print the document. Mr. Capen's memorial is a lengthy argument in favor of international copyright, divided into three chapters: 1. Copyrights as property recognized by law; 2. The effect of an international copyright law on literature, science, and education; 3. The effect of an international copyright law upon authors and publishers. The select committee made no report.

Senator Johnson, of Maryland, in the first session of the 29th Congress, attempted to revive the subject by making a motion, Jan. 22, 1846, that the several memorials upon international copyright on the files of the Senate be referred to a select committee. This was agreed to, and Messrs. Cass, Berrien, Dix, Johnson of Maryland, and Pennybacker were selected to form the committee; but they do not seem to have taken any action.

Like a shuttlecock this subject of international copyright appears now in the House, now in the Senate, and then, again, in the House, where, March 22, 1848, Mr. T. Butler King, of Georgia, presented a memorial of John Jay, and also the memorial of William C. Bryant and others, which was ordered to be referred to a select committee, and April 13th, Messrs. King, Marsh, Ingersoll, Horace Mann, Morse, Hilliard, Sims, Preston, and Murphy were appointed to serve upon the committee. On the 29th Mr. King moved that the memorials be printed, which was agreed to, and the document as printed, occupying 33 octavo pages, contains: 1st, Mr. Jay's petition; 2d, the memorial of the publishers, which had

been presented to the House Dec. 16, 1843, and already printed in the documents of the 1st session of the 28th Congress; 3d, a catalogue of American books published in England; and, 4th, the petition signed by William C. Bryant and fifteen others. Mr. Jay's document is the most thorough yet presented to the attention of Congress in this class. The keynote is struck in the first paragraph, where he states that, from a careful examination of the law of copyright then in force, he "is well persuaded that many injuries, direct and remote, are inflicted by the exclusion of foreigners from the privileges of that act, upon the rights of American authors, upon the stability and respectability of the American book-trade, and upon the interests of the American reading public, and that the passage of an international copyright law, by which foreign authors shall be allowed their copyright here, and American authors assisted to their copyright abroad, would not only be an act of national justice, but of national policy; that it would afford to our native authors what they have never yet enjoyed, '*a fair field*;' that it would supply a new stimulus to intellectual exertion, infuse a more elevated tone into our national literature, give a healthier character and a wider competition to the American book trade, and secure a better class of books for general circulation."

In support of these views he appends various facts and arguments. It is interesting to note that he sustains Mr. Clay's argument that there is no constitutional objection to the extension of copyright to foreigners, because the object of the constitutional clause was to promote the progress of science and the useful arts, which belong to no party or country, but to mankind generally. The want of an International copyright act, he argues, produces: 1. Injury to American authors, — *a*, in regard to the sale of their books at home, — *b*, in regard to the sale of their books abroad; 2. Injuries to American publishers and the numerous artisans connected with the book trade (by rendering the business of reprinting speculative and unsafe); 3. Disadvantageous to the reading public and the nation at large. The objections which at different times had been advanced against International copyright are answered *seratim*, and at length, and with much force. He finally urges upon Congress to extend the provisions of the domestic copyright act to the

works of foreigners published after the passage of such a law, provided a title-page and copies of each work are deposited according to the law, besides a duplicate copy sent to the Smithsonian Institution, and provided the work is printed and published in the United States within a specified time. Translations to be included in the protection.

The document, to which is appended a list of signatures headed by William Cullen Bryant, is but the first and the last two paragraphs of Mr. Jay's memorial. Among the signers are Charles Fenno Hoffman, Ogden Hoffman, Jr., and Theodore Sedgwick.

February 1, 1851, Mr. Winthrop, on the floor of the Senate, said: "I present the memorial of the American Medical Association, prepared in conformity with the resolution adopted at their late annual meeting in Cincinnati, and signed by their president, Dr. Mussey, praying for the adoption of an international copyright system, both as a measure of abstract expediency and justice, and more particularly as essential to secure a just remuneration to American authors, and a just encouragement to American literature. I move the reference of the memorial to the Committee on the Judiciary; and, as it relates to a subject of no little public interest, and comes from an association composed of gentlemen of high scientific character and great moral worth in all parts of the Union, I move that the memorial be printed." But, on February 4, the Committee on Printing reported against printing the document, and nothing further came of this movement.

The next senator to say a word in favor of international copyright was Mr. Charles Sumner, who, July 19, 1852, presented the petitions of Washington Irving, James Fenimore Cooper, and others, with these words: "I have in my hands an important petition concerning American literature, signed by names universally honored in this country. The petition is short, and I will read it: 'The undersigned, authors, publishers, booksellers, printers, editors, and paper-dealers, citizens of the United States respectfully ask that your honorable body will enact a law for the benefit of American literature which shall give to British authors and publishers the same right to

the control of their literary property in the United States that the law of England offers reciprocally to the authors and publishers of this country.' I have also a second petition to the same effect. These petitions were prepared some time ago, but only now have been placed in my hands. Among the illustrious petitioners are James Fenimore Cooper, on whose signature is now the sacred seal of death, Jonathan N. Wainwright, Hermann Melville, William C. Bryant, George P. Putnam, Washington Irving, Rev. Dr. Francis L. Hawks, Dr. Edward Robinson, Rufus W. Griswold, Bayard Taylor, and John Jay. Uniting with these petitioners in their prayer, and cordially desiring some action of Congress on this subject, if not this session, yet speedily, so soon as it practically can be done, I move that these petitions be referred to the Committee on the Library." The petitions were so referred, but no action was taken upon them.

The following year, 1853, copyright agitation was begun from another quarter, namely the Department of State. On the 15th of February five publishing firms of New York City, *viz.*, D. Appleton & Co., G. P. Putnam & Co., Robert Carter & Bros., Charles Scribner, and Stanford & Swords, addressed a letter to Edward Everett, then Secretary of State, setting out the points which they deemed of practical necessity in passing an international copyright treaty. These "points" are in effect, that the title of a foreign work should be entered in the United States District Court or the Department of State before its publication in England; the type set up, and the book printed and bound in this country, and the American publisher, in order to secure protection, must show his right to the book from the author in writing. If within thirty days from its publication abroad there is no authorized edition published here, then any one shall have the right of reprinting the work. Mr. Everett began negotiations, through the American minister in London, to effect a copyright treaty, and, as we learn from a letter written by Mr. Charles Sumner, this treaty was reported by the Senate Committee on Foreign Relations, considered in the Senate, and finally left on the table, without any definite vote.

In the meantime opponents of international copyright viewed with alarm this new movement, which they thought more likely to succeed, perhaps, than the attempted passage of a bill, and in December of that year, and during the first four months of 1854, a dozen petitions were presented to the Senate, from "citizens" of Pennsylvania, New York, Ohio, Michigan, Connecticut, and Massachusetts, remonstrating against the ratification of a treaty. They were variously referred to the Committee on Foreign Relations, or Committee on the Library, or were laid on the table. Mr. James Cooper (also a senator from Pennsylvania) requested information from Mr. Henry C. Carey, "calculated to enable him to act understandingly in reference to the international copyright treaty now awaiting the action of the Senate," which request resulted in the publication of Mr. Carey's well-known "Letters on International Copyright."

In the first session of the 35th Congress international copyright was again revived in the House by Mr. Edward Joy Morris, of Pennsylvania, who, Dec. 10, 1857, gave notice of his intention to introduce a bill, and Jan. 18, 1858, presented House bill No. 82, which was referred to the Joint Committee on the Library; but no action was taken. In the first session of the next Congress he asked leave to reintroduce his bill, and Feb. 15, 1860, presented it unchanged, as House bill No. 32 of that session, — "A bill to provide for an international copyright law," when it was referred to the Committee on Foreign Affairs. Neither committee nor House seems to have given any further concern to this bill, the *second* international copyright bill presented to Congress. The bill was never printed; but the manuscript original is preserved in the file room of the House of Representatives. Its purport was to so amend the copyright act of Feb. 3, 1831, as to extend its provisions to persons not citizens of the United States, and to their widows and children; such persons being the subjects of foreign countries granting equal benefits to citizens of the United States. The stipulations necessary to be complied with before a copyright could be secured were the deposit of a printed copy of the title, before

publication, in the clerk's office of one of the district courts, and the stereotyping, printing, and publishing of the work copyrighted in the United States, within one month after its publication abroad, by a *citizen* of the United States. The importation of the foreign edition by the American copyright proprietor rendered importation, or reprinting, free to all, which was also the case if the publisher allowed the supply of any work to become exhausted. The provisions of the bill were not to apply to newspapers or periodical publications.

During the Civil War it was not to be expected that any thought could be given to the subject of copyright, and it is no surprise, therefore, to find no renewal of agitation concerning this question until 1866. On February 19th of that year Mr. Edwin D. Morgan, of New York, presented to the Senate a petition from citizens of that State, praying the enactment of an international copyright law, which was referred to the Committee on Foreign Relations; and during the months of March and April following Mr. Sumner presented eleven different petitions and memorials for the same object, the first of these headed by William Cullen Bryant, and the second signed by Henry W. Longfellow and others. They were all referred to the Senate Committee on Foreign Relations, but were not printed; and on February 28th of the following year (1867), Mr. Sumner, from that committee, asked that it be discharged from the further consideration of these petitions for international copyright, without any report having been made by the committee.

Dickens's second visit to this country, in 1867, may partially account for the renewal of the agitation beginning about that time, and which reached Congress early in the following year, when Mr. Samuel M. Arnell, of Tennessee, January 16th, submitted the following resolution to the House of Representatives, which was read and agreed to: "*Resolved*, That the Committee on the Library is hereby instructed to enquire into the subject of international copyright, and the best means for the encouragement and advancement of cheap literature, and the better protection of authors, and to report to the House by bill or otherwise." The Com-

mittee on the Library was a joint committee, consisting at that time of Senators Morgan, of New York; Fessenden, of Maine; and Howe, of Wisconsin, and Mr. Baldwin, of Massachusetts; Mr. Spalding, of Ohio, and Mr. Pruyn, of New York, members of the House of Representatives. Promptly, Feb. 21, 1868, Mr. Baldwin presented to the House a report accompanied by a bill, both of which were ordered to be printed. Mr. Pruyn asked and obtained consent to submit the views of the minority of this committee, but probably because no further action was taken upon the majority report no minority report was ever presented.

Mr. Baldwin's report, the *third* international copyright report, is a considerable document, presenting forcibly the need for and advantage of a law protecting the works of foreign authors in the United States. The initial paragraph is as follows: "We are fully persuaded that it is not only expedient but in a high degree important to the United States to establish such international copyright laws as will protect the rights of American authors in foreign countries and give similar protection to foreign authors in this country. It would be an act of national justice and honor in which we should find that justice is the wisest policy for nations, and brings the richest rewards." The report continues: "In all civilized nations it is understood that the author of a book or a work of art has a natural right of property in his work as real as that of his neighbor to any other kind of personal property. No right can be more unquestionable." Pointing out how beneficial have been the results of the international copyright laws and treaties of European countries, the committee says: "We alone have neglected to change the antiquated and vicious policy that allows our authors to be plundered in foreign countries, represses literary development in our own country, makes the business of publishers, to a considerable extent, speculative and uncertain, and encourages the circulation here of the most worthless English books instead of the better books from other countries and from our own writers, which, under the operation of suitable copyright laws, would exclude them from the market." For the policy advocated by Henry Clay, in his report, of granting protection to the works of foreign authors, the following four reasons are given, and each sustained by good arguments: 1. A sense of justice to the author's right of property in his work; 2. The

development of our own literature, making it national; 3. The improvement of the business of manufacturing, publishing, and selling books in the United States; 4. The promotion of the interests of American book-buyers. It is to be noted that this report lays much stress upon the need for laws which will secure the American authors' property abroad, — a consideration which was not touched upon in the two previous reports. The case of Mr. Motley and his "History of the Dutch Republic" is dwelt upon as an illustration of the need of such protection. Another novel argument in this report is to the effect that the establishment of international copyright laws would tend to encourage the publication of translations of the best works of foreign countries, such as the best French, German, Swedish, and Danish works (according to the report), instead of the republication of the worthless English books. The committee have thought it worth while to devote more than a page of their report to answering the objections, real or imagined, which have been alleged against the bill, especially such as have been contained in the memorials presented to Congress. These objections are quoted, enumerated as follows, and answered *seratim*: 1. "Such laws would increase the price of books to American readers;" 2. "No American books are republished in Great Britain;" 3. "This policy would give British manufacturers of books entire monopoly of the American market;" 4. "It would prevent the adaption of English books to American prejudices" (which fact the committee thought an excellent reason for an international copyright law); 5. "It would derange and oppress the American book-trade, by suddenly giving the benefit of copyright to foreign books already published here." Retroactive copyright was, of course, never contemplated. The bill accompanying Mr. Baldwin's report was the *third* international copyright bill presented to Congress. It is composed of five long sections, and enacts, in brief, that foreign authors of books, maps, dramas, or musical compositions, as well as designers of engravings, which are first published abroad after the act has gone into effect, and their executors or legal assigns, shall have the same

copyrights as are granted to citizens of the United States; provided, the countries of first publication have secured to citizens of the United States equal rights of copy, and upon the stipulation that all editions are to be wholly manufactured in the United States, and sold by publishers, *citizens* of the United States, one copy of the best *foreign* edition to be deposited in the Library of Congress and the title-page registered in the clerk's office of some district court of the United States within three months after first publication, and within the same term arrangements must have been made, in good faith, with an American publisher for immediate publication in the United States, and all the requirements of the domestic copyright law — registration of title, deposit of two copies in Library of Congress, etc. — have been complied with, as for an original American work. Translations are to be protected provided the original work has been registered in the United States and a copy deposited in the Library of Congress within four months after first publication, and it is announced upon the title-page that the author reserves the right to translate; and, further, that within six months after date of such registration of original work the authorized translation has been offered to an American publisher. As with the original work, every edition of the translation must be wholly manufactured in the United States, and published by a citizen; the provision as to translations to extend only to books first published in countries where similar protection is secured to American authors. A proclamation by the President that arrangements have been concluded with any nation shall immediately entitle authors and artists of such country to the benefits of the act. The presentation of the "Baldwin" report resulted in a considerable agitation among authors and an increment to the already considerable literature upon the subject of an international copyright with England. Just previous, in October, 1867, Mr. James Parton contributed a forcible article to the *Atlantic Monthly*; and in 1868, Mr. Henry Charles Carey issued a second edition of his "Letters on International Copyright," while the "Copyright Association for the Protection and Advancement of Literature and Art" pub-

lished a pamphlet entitled: "International Copyright," being an account of the proceedings at a meeting of authors and publishers, at the rooms of the New York Historical Society, April 9, 1868, for the purpose of organizing the International Copyright Association. This was edited by Mr. Edmund Clarence Stedman, and contains, besides a number of letters from various authors, speeches by William Cullen Bryant, S. Irenæus Prime, Francis Lieber, Samuel Osgood, and Philip Schaff, together with an appendix containing "The Right of Copyright," by S. I. Prime, and Richard Grant White's article "The Copyright Question as it Stands," and at the end a memorial to Congress praying the passage of a bill to secure the rights of authors, artists, and designers, which is signed by 153 authors, publishers, artists, etc. But the outside agitation produced no effect upon Congress, and no action was taken upon either bill or report during that session.

In 1870 Lord Clarendon proposed, on behalf of the British Government, a reciprocity treaty for a term of five years; but this treaty proposal seems never to have gone so far as to have been considered by the Senate.

In the 2d session of the 42d Congress Mr. Baldwin's bill was revived by Mr. S. S. Cox, of New York, who introduced it, without change, as House bill No. 470 of that session. He presented it to the House Dec. 6, 1871, when it was committed, without discussion, to the Committee on the Library, and ordered to be printed. Not content with the prospect of a probable interment of his bill in the pigeon-holes of that committee, he moved, December 11th, the consideration and passage of the following resolution: "*Resolved*, That the Committee on the Library be directed to consider the question of an international copyright, and to report to this House what, in their judgment, would be the wisest plan, by treaty or law, to secure the property of authors in their works without injury to others' rights and interests, and if, in their opinion, Congressional legislation is best, that they report a bill for that purpose." Mr. Kelley, of Pennsylvania, objected to the resolution; and Mr. Perce, of Mississippi, suggested that it be referred to the Committee on the Library, whereupon Mr. Cox pointed out that there was

no propriety in doing that, as the resolution was a direction to that committee that they exercise their duty in a peculiar manner. As Mr. Kelley again objected to the resolution, Mr. Cox moved the suspension of the rules so as to enable him to introduce it, pending which the House adjourned; but on the following Monday, December 18th, the resolution was taken up again, and decided in the affirmative by a vote of 105. On the 23d of January Mr. Cox moved that 500 additional copies of the bill be printed, which motion was referred to the Committee on Printing, and the committee reported favorably February 7th, upon which Mr. Cox asked leave to make certain corrections in the bill before the extra copies were printed, which was granted. Of this second print of the bill it has been impossible to secure a copy and ascertain the exact nature of the corrections or amendments; but as the "Baldwin" bill provided that titles should be recorded in the clerks' offices of the district courts, and as Mr. Cox had reintroduced this bill without change, although the domestic copyright law when codified, July 8, 1870, had changed the place of record to the Library of Congress, it is safe to conjecture that the bill was amended in this respect, and very likely in this only. Meanwhile the Pennsylvanians felt it necessary to take active steps to head off the new copyright movement. Mr. Kelley, following Mr. Cox's precedent, submitted to the House an opposition resolution on Feb. 12, 1872, which was also referred to the Committee on the Library, and was ordered to be printed. It was to the

following effect: "Whereas it is expedient to facilitate the reproduction here of foreign works of a higher character than that of those now generally reprinted in this country; and whereas it is in like manner desirable to facilitate the reproduction abroad of the works of our own authors; and whereas the grant of monopoly privileges, in case of reproduction here or elsewhere, must tend greatly to increase the cost of books, to limit their circulation, and to increase the already existing obstacles to the dissemination of knowledge; Therefore *Resolved*, That the Joint Committee on the Library be, and it hereby is, instructed to inquire into the practicability of arrangements by means of which such reproduction, both here and abroad, may be facilitated, freed from the great disadvantages that must inevitably

result from the grant of monopoly privileges such as are now claimed in behalf of foreign authors and domestic publishers." In the

Senate, also, the Pennsylvania senators were busy pouring in memorials from "citizens" of that great State, who are represented as being "engaged in making books," and more particularly described as type-founders, printers, paper-makers, music-printers, binders, and gold-beaters! (Pennsylvania statesmen do not recognize that class of her citizens called *authors* engaged in making books). These various petitions were referred to the Committee on the Library, but were not printed. Mr. Henry C. Carey issued his second work upon this subject, entitled, "The international copyright question considered with special reference to the interests of American authors, American printers and publishers, and American readers," in which the "Baldwin" bill is sharply criticized and copyright of any kind objected to; and on January 27th there was a meeting of Philadelphia "publishers, paper-makers, and others interested in the manufacture of books," presided over by Mr. Henry C. Baird, at which a memorial was adopted opposing international copyright for eight reasons, and this document was ordered to be taken to Washington and laid before the Joint Committee by a suitable delegation. In New York the booksellers and publishers of that city, with a delegation from Boston, held meetings January 23d and February 6th declaring in favor of copyright, and drawing up a bill embodying their ideas, which, with an argument in support of it by Mr. William H. Appleton (who drew up the bill), together with other documents, it was resolved should be taken to Washington by a committee and laid before Congress. At the second of these meetings was presented a memorial of British authors, in which they conceded that "the Americans have strong reasons for refusing to permit the British publisher to share in the copyright which they are willing to grant to the British author," and, expressing themselves as duly appreciating the force of the reasoning which distinguished between the British author and the British publisher, suggested that negotiations be renewed on the condition of American

re-manufacture. This document was signed by fifty authors, including Herbert Spencer, Sir John Lubbock, John Stuart Mill, George Henry Lewis, James A. Froude, John Morley, Prof. Huxley, Charles Darwin, Prof. Tyndall, and Mr. Ruskin. Especially to be noted as among the number are the two persons who were also signers of the first "Address" of British authors sent to America, thirty-five years earlier, namely, Thomas Carlyle and Harriet Martineau. The executive committee of the Copyright Association held a meeting in New York, on Friday, January 26, and adopted, for the purpose of presentation to the Library Committee, a bill drawn up by Charles Astor Bristed, which is comprehensive in proportion to its brevity, and is to the following effect: "All rights of property secured to citizens of the United States of America by existing copyright laws of the United States, are hereby secured to the citizens and subjects of every country, the government of which secures reciprocal rights to citizens of the United States." The act to take effect two years after its passage.

This agitation of the subject induced the Joint Committee on the Library, consisting, at that time, of Senators Howe, of Wisconsin; Morrill, of Maine, and Sherman, of Ohio; and Representatives Peters, of Maine; Wheeler, of New York, and Campbell, of Ohio; to hold two public meetings for the purpose of hearing testimony upon copyright, and arguments were listened to from Mr. Appleton, of the New York publishing firm; E. L. Andrews, Esq.; Mr. Bristed; Prof. Youmans; Isaac Sheldon, and the late Mr. Van Nostrand, of New York, in favor of some bill protecting the works of foreign authors; and, as *opposed* to the passage of any measure, Mr. W. P. Hazard, one of a committee from Philadelphia, who also read a communication from Mr. Henry C. Lea; and Mr. Hubbard, of Boston, who read a letter from Harper & Brothers objecting to international copyright. This letter closes with the following words: "In view of the great results which have grown out of the freedom of literary exchange which we now enjoy, . . . the liberalizing, broadening, elevating influence upon the national mind of the choicest

thoughts of another great and cultivated people now so freely opened to it, it is our belief that the adoption of any serious restriction upon this freedom would be a very hazardous experiment, and possibly an irrevocable calamity to the nation." On the 19th of February the Committee held a final private meeting, at which were presented a printed statement by Henry Carey Baird, and a final draft of the bill drawn up by American publishers, slightly modified from that presented at the earlier meeting of the committee.¹ Directly following this meeting of the committee, however, it was called upon to consider two new copyright bills, based upon the then novel "royalty" scheme of copyright, both presented to Congress upon the same day, Wednesday, February 21, 1872, the one in the Senate by Mr. Sherman, and the other in the House by Mr. Beck. The two bills were ordered to be printed and referred to the Library Committee. The bill presented by Senator Sherman, commonly called the "Elderkin" bill, from its being due to the suggestion of Mr. John Elderkin, grants to the foreign author of such country as extends similar privileges to American citizens, what is called a "copyright" for ten years from first publication; provided he delivers to the Librarian of Congress, within twelve months from such first publication, two copies of his work and complies with the other stipulations of the domestic copyright law; having done which he is at liberty to print and publish his work in this country himself, or he may contract with any publisher in the United States for publication at the rate of five per centum of the gross cost of the publication as his royalty, it being especially enacted, however, that any person or persons may republish the author's work, upon which, the bill provides, he may sue them in any court of competent jurisdiction for his lawful royalty of five per centum of the gross cost of each publication. The bill introduced by Mr. Beck was suggested by Mr. John P. Morton, the well-known publisher, of Louisville, Ky., and is similar in

principle to the "Elderkin" bill, providing that a foreign author may obtain a copyright on his work on the following terms and conditions: "Before his work is first published for sale in this country, the title-page thereof must be recorded in the office of the Librarian of Congress, the work to be free to be printed and published by all responsible publishers; the copyright not to exceed ten per centum on the selling price. The author shall have an agent prepared to make contracts, notice of which shall be given through the public press." Both bills stipulated that nothing in the act was to prevent the importation or sale of the foreign edition of the work. Mr. Morton, who suggested this bill, says, in a letter to the Hon. S. S. Cox, "Whether Congress ought to pass an International copyright law or not is another question. But, if they should do so, they should look to the interests of the millions of readers, and not to the *protection* (I believe that is the word) of the few publishers."

In this chronological progress our narrative has now reached the first set speech in Congress upon the subject of international copyright, which was delivered by Mr. Archer, of Maryland, on the floor of the House, Saturday, March 23, 1872. Mr. Archer's long speech, which occupies nearly five pages of the *Congressional Globe*, is mainly devoted to the consideration and refutation of the arguments advanced by Mr. Henry Charles Carey, in his "Letters on International Copyright." The speaker's own position upon this question is plainly indicated in the following expressive passages, which open his oration: "What a melancholy spectacle is presented to the Christian and moralist, in this day of boasted enlightenment, by the two greatest nations on the globe, in their dealings with each other in the matter of mental commodities! Two bands of literary pirates, virtually armed with letters of marque from their governments (for their governments would most assuredly protect them if resistance were made to their piratical encroachments), launch themselves boldly forth on the great sea of literature, and openly flaunting the black flag in the mid-day sun, swoop mercilessly down upon property which they know to be another's, and selecting for capture the richest prizes there afloat, hurry them into port, where they find thousands of eager purchasers. These purchasers having, as

¹ The text of this proposed bill is given in "The Law of Copyright," by W. A. Copinger, 2d ed., 8°. London, 1881, pp. 496-497; and in the *Publishers' Weekly*, v. 15, 8°. N. Y., 1879, p. 323.

one might think, no honest scruples, propound no awkward queries about right and title, but buy and read, and ponder and profit by their ill-gotten merchandise just as coolly and as calmly as if no crime had been committed against the laws of God and of justice. . . . It is, indeed, not too much to say that such plain infractions of the eighth commandment, tacitly sanctioned as they are by our government, and constantly going on in our midst, by habituating us to scenes of open robbery, perpetrated with entire impunity, are enough to demoralize the whole nation, already deeply tainted with political corruption. And perhaps the most startling feature of the matter is to be found in the utter indifference with which the whole thing has come to be regarded, even by persons of undoubted integrity."

Mr. John B. Storm, of Pennsylvania, also made a speech in the House on Saturday, April 13th, on international copyright, in which, after some preliminary remarks upon property in mental productions, and an account of the recognition of the right of literary property in England, he dwells more particularly upon the provisions of the "Baldwin" bill, introduced by Mr. Cox, which he defends. These two, by no means great efforts, are the only speeches as yet delivered in Congress upon this important subject.

The Committee on the Library withheld their report until the next session of Congress, when, on Feb. 7th, 1873, Senator Morrill, of Maine, submitted it to the Senate, whereupon it was ordered to be printed, and the committee discharged from the further consideration of the subject. On the same day he reported the bill introduced by Mr. Sherman without amendment, and that it ought not to pass; and, upon his motion, it was ordered to be postponed indefinitely.

The "Morrill" report, as printed, is a document of eight pages, some of these being taken up by tables showing the English and American prices of the same books, from which exhibits the committee conclude that the law of copyright in England and this country "tends unmistakably to check the popular diffusion of literary production by largely increasing the price." The committee, in the first paragraph of their report, say, "that, after attentive consideration of the subject-matter, they have found the question of international

copyright attended with grave practical difficulties, and of doubtful expediency, not to say of questionable authority." It had been argued before the committee, by Mr. E. L. Andrews, that the provision of the Constitution granting Congress power to legislate concerning authors, had not been limited to *American* authors, and was, therefore, intended to grant protection to literary and scientific productions, irrespective of nationality, — that this was a matter of justice and right, and that the Constitution, in this respect, is mandatory in its character, and, therefore, not to legislate in this behalf is to refuse the performance of an obvious duty. This reasoning, it will be remembered, is in line with that adopted by Mr. Henry Clay, in the first international copyright report. In reply to this, the committee say (with much reason) that, as regards the constitutional provision, "The language is sufficiently comprehensive, doubtless, to include all authorship. But, in construing the Constitution, reference should be had to the condition of affairs at the period of its adoption, the obvious intent of its framers, as gathered from contemporaneous history, and must receive such construction as will carry out the object in view. It was, it should be observed, to constitute, in a qualified sense, a government in the interests of the people of the United States. Its framers would not, therefore, be expected to be solicitous for the protection of individual rights of those alien to its jurisdiction, nor were the circumstances of their national position such as were calculated to invite to the consideration of topics so eminently international in their operations and relations." And the report concludes: "In view of the whole case, your committee are satisfied that no form of international copyright can fairly be urged upon Congress upon reasons of general equity or of constitutional law; that the adoption of any plan for the purpose which has been laid before us would be of very doubtful advantage to American authors as a class, and would be not only an unquestionable and permanent injury to the manufacturing interests concerned in producing books, but a hindrance to the diffusion of knowledge among the people, and to the cause of universal education; that no plan for the protection of foreign authors has yet been devised which can unite the support of all, or nearly all, who profess to be favorable to the general object in view; and that, in the opinion of your committee, any project for an international copyright will be found, upon mature deliberation, to be inexpedient."

Within a year after the date of the "Morrill" report the sixth international copyright bill was presented to the House of Representatives by Mr. Henry B. Banning, of Ohio, Feb. 9, 1874, and referred to the Committee on Patents. The document is entitled, "A bill extending to authors in certain cases the rights, privileges, and protection given inventors by the laws of the United States," and is a simple and comprehensive reciprocity copyright bill, granting that authors and artists of foreign countries publishing works after the act has been passed "shall have the same exclusive right and liberty to multiply and sell copies of such works in the United States that now are, or may hereafter be, granted by the laws of the United States to authors and artists who are citizens of the United States, subject to the same conditions, regulations, and limitations: *Provided, however,* That the provisions of this act shall not be extended to the books or other works of authors and artists that may be first published in any foreign country where the laws shall not, at the time of such first publication, grant and secure to citizens of the United States, and to persons resident therein, privileges and benefits of copyright equal in extent to those herein specified." This bill unhappily, received no further attention either in the committee or in the House.

In 1878 was set on foot, for the fourth time, a movement to secure international copyright by treaty. This agitation is noticeable as originating with Messrs. Harper and Brothers, who had previously been so outspoken in opposition to any measure for this purpose. On November 25th of that year they addressed Mr. Wm. M. Evarts, then Secretary of State, submitting a draft for an international copyright convention, based upon the so-called "Clarendon treaty" of 1870, which has become known as the "Harper draft."¹ This new movement awakened considerable discussion. The draft was drawn up in the interests of publishers as well as authors, and while there were some differences expressed in matters of detail, nearly

all the prominent publishers signified their approval, while John Jay, James Grant Wilson, and Nathan Appleton, as American members of the International Copyright Committee of the Association for the Reform of the Law of Nations, sent a memorial approving the plan of treaty, to the Secretary of State, Feb. 11, 1880, and, in August of the same year, it was approved by fifty-two American authors, including Longfellow, Holmes, Whittier, and Emerson. In September of that year it was submitted by Minister Lowell to Earl Granville. But the basis of this treaty had been the stipulation that English books, to secure copyright in this country, must be wholly manufactured here, by an American citizen, within three months after original publication in England; and Earl Granville, in his reply to Mr. Lowell, in March, 1881, stated that the British government favored such a treaty, but considered it essential that the term of republication be extended to six or twelve months. With the change of administration, and the sad death of President Garfield, the matter ended without having been officially presented to Congress.

In the 3d session of the 46th Congress the petition of Theodore D. Woolsey and others, for the passage of a bill extending copyright in the United States to foreign authors, composers, and designers, was presented to the House four times between Dec. 6, 1880, and Jan. 10, 1881, and referred to the Committee on the Library, and it was also twice presented to the Senate on Dec. 9th and 13th, 1880, and referred to the same committee. This petition which was signed, among others, by Ed. Everett Hale and Dr. J. G. Holland, was never printed, and seems to have received no further consideration. In the first session of the next Congress, on Feb. 2, 1882, and again on February 28, Mr. A. C. Harmer, of Pennsylvania, presented petitions of "citizens representing the industries connected with the book and printing trades," in favor of international copyright. These were referred to the Committee on Ways and Means.

The next movement in order of time was the introduction, on March 27th, 1882, to the notice of the House, by William E. Robinson,

¹ The texts of the "Clarendon" treaty and of the "Harper draft" are printed in parallel columns in the *Publisher's Weekly*, v. 15, 80. N.Y., 1879, pp. 317-321.

of New York, of an extraordinary measure intended, if taken seriously, to codify the whole subject of literary property. The title of this elaborate bill, which consists of 22 sections and covers 73 quarto pages, is as follows: "A bill to declare and define two species of personal rights of property in literary articles; to declare and define national rights and international rights which the Government of the United States, for the people thereof, possesses in literary articles; to provide for the protection of such personal rights and of such national and international rights; to declare any violation of such personal rights and of such national and international rights to be a species of crime; to classify such species of crime into degrees; to fix the punishment for each degree of such crime; and for other purposes." In order to carry out the purposes of the bill, as defined in its title, provision is made for the establishment of the "United States Office of Literature" within the Department of the Interior, to be under the immediate direction of the "United States Commissioner of Literature," whose duties are defined at great length; he or she (the bill providing that all the officers may be either male or female) is to hold office during good behavior at a salary of \$5,000 per year. The amount appropriated in the bill, to carry out its various provisions, is the modest sum of \$1,290,000! The bill may be called an international-copyright bill, its provisions being extended to foreigners by section 18 (*k*) which is to the following effect: "Any person of a foreign nation whose government grants, within its jurisdiction, to any and all citizens of the United States the same rights in literary articles which it grants to its own citizens, shall have in the United States the same rights in a literary article originally and lawfully conceived and made by such foreign person, as any citizen of the United States has in the United States." It was ordered to be printed and referred to the Committee on Patents, but seems to have been regarded more as a literary curiosity than as a serious legislative document.

The eighth international copyright bill was introduced by Mr. Patrick A. Collins, of Massachusetts, to the House of Representatives, December 10, 1883, when it was, without discussion, referred to the Committee on Patents, and ordered to be printed.

This bill, which is entitled, "A bill to extend

the privileges of the copyright acts to persons not citizens of nor domiciled in the United States," contains some original and novel provisions. It grants copyright to foreigners to the extent of the provisions of our domestic copyright law, by striking out of the latter the words "citizens of the United States or residents therein," and substituting the word "person;" but the rights thus simply granted are made dependent upon the fulfilment of certain stipulations set out in Section 5 of the bill, as follows: "That every copyright article first published, represented, or performed beyond the limits or jurisdiction of the United States shall be printed and published by the author or proprietor, or under his authority, either in the original form or in translation, within one year from the date of entry, and two copies of such American publication delivered or deposited within fourteen days after the expiration of a year from the date of entry, in addition to the copies now required by Section 4956 of the Revised Statutes." In connection with this stipulation as to the American edition, Section 11 specially provides that plates from which to print may be imported. And, according to Section 7, if such American publication is *not* made, any person may, after the expiration of one year from the date of entry of title, make a new entry of the title, authorship, or proprietorship, and thus obtain the exclusive right of republication upon giving bond, with surety, to the Librarian of Congress, to faithfully perform the following conditions: 1. Give notice of the original entry of copyright and of the subsequent entry. 2. Keep an accurate account of the numbers of copies printed, vouching the same monthly by sworn statements of printers, binders, and himself. 3. Make affidavit as to the highest retail price and of the discounts allowed to the trade; and 4. Pay to the Librarian of Congress eight per centum of the highest retail price for each book before it is put upon the market; in default of all of which he shall be liable to an injunction, account, and treble damages. The Librarian of Congress is to pay to the proprietor, according to original entry, on demand and identification, the proceeds, less five per centum as his commission. The bill is also designed to protect dramatic

and musical compositions, it being enacted that the public representation of a drama shall be deemed to be a publication of it, and if no publication or representation of a foreign drama or musical composition occurs within a year after registration, any person may represent or perform the same upon paying the Librarian of Congress \$20 for each performance. Mr. Collins's bill seems never to have been brought back to the House from its committee.

The next move in Congress in relation to international copyright was the introduction of the much discussed "Dorsheimer" bill, presented by the Hon. William Dorsheimer, of New York, to the House, January 8, 1884. Being put to a vote as to the committee reference, it was agreed to refer it to the Committee on the Judiciary,¹ consisting at that time of fifteen members, including John Randolph Tucker, of Virginia; William Dorsheimer, of New York; Patrick A. Collins, of Massachusetts, and Luke P. Poland, of Vermont. Mr. Dorsheimer's measure is entitled, "A bill granting copyrights to citizens of foreign countries," and contains seven sections providing, in the order of the sections, as follows:— 1. Foreign authors of books, maps, dramatic, or musical publications, shall have sole control of the publishing and selling of their works in this country, and, in case of dramas, of the public performance thereof, and they shall have the exclusive right to dramatize or to translate their own works; 2. This right to continue for twenty-five years; 3, but shall terminate upon the death of the author; 4. No copyright, however, to be renewed after the expiration of the term of twenty-five years; 5. Whenever any foreign country shall grant by law to citizens of the United States similar privileges, the President shall issue a proclamation to that effect, from the date of which, the authors of such country shall be entitled to copyright in the United States; 6. But the provisions of the act are not to apply to authors of any country until the President has made a proclamation as

above; 7. The provisions of the domestic copyright law, not inconsistent therewith, to be applied to foreign authors; and foreign copyrights to be subject to the stipulations of the domestic law. Promptly on Tuesday, the 5th of February, Mr. Dorsheimer submitted a report from the Judiciary Committee, which was ordered to be printed; and reported the bill with some amendments, upon which it was placed upon the Calendar of the House. The amendments made in committee are to the following effect:— In the first section the word "map" is stricken out, and the provision that "authors shall have the exclusive right to dramatize, or to translate their own works" is modified to "may reserve" such right. The third section is stricken out, and sections two and four are so amended as to make the terms of copyright twenty-eight and fourteen years, or the same as the terms granted by the domestic law. Sections five and six contain verbal alterations, and an amendment giving foreign countries the option to extend a similar grant to American citizens by convention of treaty as well as by law, and section seven is amended so as to more explicitly require foreign authors to comply with the stipulations of the domestic law in order to obtain a copyright. Three new sections are added enacting that whenever any foreign country shall cease to grant copyrights to Americans, the citizens of such country shall cease to enjoy literary rights here, and that works published or dramas publicly performed—in this country before copyright is obtained, or abroad one year before application has been made—may not obtain protection. These amendments were doubtless due to the efforts of the American copyright league. The report which accompanied this amended bill is a very brief document, setting out, firstly, the provisions of the bill which it recommends, followed by information as to the copyright provisions of the most important European countries, mainly as to the term of protection, etc., and a list of the copyright treaties negotiated by the principal European States from 1843 to 1881, and finally summarizes the arguments in favor of the measure as follows: "There is no civilized country which does not in some form recognize

¹ The newspaper discussions upon this bill are conveniently reprinted in the *Publisher's Weekly*, v. 25, 8^o. N. Y., 1884, pp. 39, 58-61, 91-5, 169-174, 198-207, 230-243, 260-274, 294-303, 323-29, 347-51, 488-9, 508-9, 572-3, 595-6.

the property which an author has in the creations of his intellect. The committee think that the United States should grant this right of property to foreigners as well as to natives. There can be no just discrimination based upon the nationality of the person to whom the property rightfully belongs. The policy by which States refused rights of property to foreigners has long since been reversed. In most, if not in all the States of the Union, foreigners are entitled to hold property, both real and personal, upon precisely the same terms as natives. It is manifest that the ancient discriminations grew out of ignorance and prejudice, and that the modern rule conduces to civilization and to the peace of nations. It is believed that, if the bill accompanying this report is passed, American authors will receive great and valuable advantages The committee earnestly recommend this measure to the House, in the full belief that its passage will work a high and enduring benefit to the people of the United States, and contribute to the civilization and enlightenment of the world."

On Monday, February 18th, Mr. Dorsheimer, under instructions from the Committee on the Judiciary, moved that the rules be suspended so as to enable him to report from the committee, and the House to agree to, a resolution making the bill a special order for February 27th, and to continue from day to day thereafter until finally disposed of. But even a move to give the bill a chance for discussion was not to be successful. Mr. Deuster, of Wisconsin, requested the reading of an extract from the *Chicago Tribune* to the effect that the bill was "a scheme to make books dear," and followed it by some remarks based upon the assertion that this is not the "land of monopolies, but the land of liberty . . . the powerful protector of free competition," etc. Mr. Chace, now a senator from Rhode Island, then a member of the House, while in favor of an international copyright and therefore favorable to the discussion of this bill, was opposed to it in its present shape, on protection grounds. Mr. Kasson, of Iowa, considered the bill as presenting a question which it was important to discuss, and he would therefore vote affirmatively. Mr. Kelley, of Pennsylvania, desired to say that he was a believer in the doctrine of international copyright; but the bill involved the interests of paper-makers, printers, bookbinders, etc., and he therefore thought a two weeks' interval

should be given them to make themselves heard before the House was called upon to vote upon the bill. The question being put, 156 voted yea, and 99 nay; but as 65 failed to vote, the resolution was lost for want of a two-thirds vote. Following this action in the House two protests were sent in, the one from citizens of Media, Pa., March 20th, and the other from the Chicago Trade and Labor assembly, against the passage of an international copyright bill, and were presented by Mr. Everhart and Mr. G. R. Davis. April 16th, on motion of Mr. Dorsheimer, the House ordered the bill to be reprinted with an amendment in the nature of a substitute recommended by the Judiciary Committee. This is the third print of the bill, in which the bill as originally introduced on January 8th, is printed in crossed type, and is followed by a complete print of the bill in italics, as it was reported from the committee on February 5th, there being no change in the text.

President Arthur's message to Congress at the beginning of the 2d session of the 48th Congress Dec. 1, 1884, recommended legislation upon international copyright in the following words: "The question of securing to authors, composers, and artists copyright privileges in this country in return for reciprocal rights abroad is one that may justly challenge your attention. It is true that conventions will be necessary for fully accomplishing this result, but until Congress shall by statute fix the extent to which foreign holders of copyright shall be here privileged, it has been deemed inadvisable to negotiate such conventions. For this reason the United States were not represented at the recent conference at Berne."

December 8th, same year, Mr. Spooner presented to the House, and, Dec. 19th, Mr. Aldrich to the Senate, a memorial of the Music Teachers' National Association urging the passage of the Dorsheimer or some similar bill. In the House this memorial was referred to the Committee on the Judiciary, while upon the motion of Senator Aldrich it was printed in the *Congressional Record*, and referred to the Joint Committee on the Library. This petition sets out the belief of the petitioners that musical-art creation has not developed in America proportionally with the other arts, owing to the

want of an international copyright law, and the consequent free reprinting of foreign musical works, and it is therefore urged that the "Dorsheimer" bill be passed. The Boston Handel and Haydn Society, and K. H. Darby, of St. Louis, and others, presented, through Mr. Spooner, Feb. 19th, 1885, similar petitions. But, although Mr. Dorsheimer's bill was now upon the House Calendar, it failed to come up for discussion and there was no subsequent action upon it.

On the 5th of Jan., 1885, the tenth international copyright bill was presented to Congress by Mr. English, in the House, where it was read twice, ordered to be printed and referred to the Committee on the Judiciary. This bill deals wholly with dramatic compositions, and provides, stated as briefly as possible, that citizens of such foreign countries as shall grant similar privileges to citizens of the United States, who shall comply with the provisions of chapter three, title sixty of the Revised Statutes relating to copyrights, within one year after first publication or performance, shall thereupon, have the sole right to reprint or perform their dramatic works in the United States for the double terms of twenty-eight and fourteen years, and may reserve the right to translate their own works. No action was taken upon this bill.

The eleventh international copyright bill, which was drawn up by the American Copyright League, was presented to the Senate on the 6th of January, 1885, by Mr. Hawley, of Conn., and was referred to the Committee on the Judiciary. This bill contains five sections, of which the first enacts, "That the citizens of foreign states and countries of which the laws, treaties, or conventions confer, or shall hereafter confer, upon citizens of the United States rights of copyright equal to those accorded to their own citizens, shall have in the United States rights of copyright equal to those enjoyed by citizens of the United States;" the fifth section providing that the proclamation of the President to that effect shall be conclusive proof that such equality of rights exists in any country. Section 2 enacts that the law shall not apply to any work published before the date of the act; and Section 3, that the domes-

tic copyright laws shall be applicable to the copyright created by the act; while Section 4, repeals the clause (Section 4971 of the Revised Statutes) in the domestic law which allows the importation of foreign books, this being necessary in order to prevent other importation than that authorized by the copyright proprietor, his right of importation being implied. This section also amends the paragraph of the copyright law (Section 4954), which provides for the fourteen years' extension of copyright, by striking out the words which limit such second term to citizens or residents of the United States; and further amends the clause (Section 4967) which forbids the printing or publishing of any manuscript without consent of the author, by striking out the parenthetical condition, "if such author or proprietor is a citizen of the United States or resident therein." But the wording of the first section of this bill, to the effect that foreign authors are to have such copyrights as are conferred by our law upon our own citizens, makes it necessary to leave Section 4952 of the Revised Statutes intact, which grants copyright to "*any citizen of the United States, or resident therein,*" which is an awkward necessity, and is besides likely to lead to confusion of construction. The committee making no report during that Congress, Senator Hawley in the first session of the following (the 49th) Congress, reintroduced his bill Dec. 8, 1885, when it was again referred to the Committee on the Judiciary. But, on the 14th of the same month, Senator Hoar from this committee asked that the committee be discharged from the further consideration of the bill, and that it be referred to the Committee on Patents, which was agreed to. On the 6th of Jan., 1886, the Hon. John Randolph Tucker, of Va., brought the bill before the House of Representatives, upon which it was referred to the Judiciary Committee of that branch of Congress.

The annual message of President Cleveland, transmitted to Congress at the beginning of the present session, and dated December 8, 1885, contains a paragraph concerning international copyright. After speaking of the Berne conference of September, 1885, and our listening delegate there, the President says:

"The interesting and important subject of international copyright has been before you for several years. Action is certainly desirable to effect the object in view. And while there may be question as to the relative advantage of treating it by legislation or by specific treaty, the matured views of the Berne conference cannot fail to aid your consideration of the subject."

On the 21st of January last, Senator Chace, who, when a member of the House of Representatives, had shown considerable interest in the subject of international copyright during the agitation of the "Dorsheimer" bill, introduced to the Senate the twelfth bill presented to Congress for the purpose of accomplishing the desired object. This bill was read twice, and referred to the Committee on Patents. It is worthy of notice and comment that the method adopted by this last bill for securing to the foreign author protection for his literary property in this country is identical with that suggested more than fifty years ago by the earliest public advocate of international copyright yet discovered by the writer. The anonymous author of the article entitled "Community of copyright," published in *The Knickerbocker* for October, 1835, speaking of the phraseology of the copyright act of February, 3, 1831, which extends the privileges of copyright to "any person or persons, being a citizen or citizens of the United States, or resident therein," says, — after setting out at some length, and in strong language, the injustice worked by this clause, both to English and to American authors: "This should be reason and argument enough for the instant repeal of the oppressive clause. But, if another reason is required, let it be found in the meanness and injustice of the provision. Let the clause be, then, repealed, wherever it occurs in the instrument, so that all persons who choose — foreigners and citizens alike — may enjoy the benefit of what clearly is and manifestly should be considered property. . . . The act of 1831, thus purified, would be tantamount in effect to the passage of an international copyright law betwixt America and Great Britain." And in this very way the bill introduced by Senator Chace grants copyright to the foreign author, by striking out from the text of the domestic copyright law every clause which con-

fines the privileges of the right conferred to "citizens" or "residents" of the United States, leaving the reading of the section of the Revised Statutes which creates the right, "any author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition," etc., shall have the sole control of the sale of copies thereof. But while the first section of the present bill so exactly carries out the suggestion of the writer quoted, the further provisions of this bill would most certainly not find favor with the anonymous contributor to *The Knickerbocker*, who believes in the author's absolute and perpetual right of property in his literary productions. For while the "Hawley" bill was limited by the reciprocity provision, the copyright privilege granted by this bill is restricted; 1st, by the requisition of American manufacture; 2d, by the absolute prohibition of importation; and, 3d, by the total loss of literary property in case of a publisher's breach of contract. The provisions of Mr. Chace's bill, as originally introduced, may be summarized as follows: 1, Amending the various sections of the Revised Statutes so as to exclude the limitation of its provisions to citizens of the United States, thus extending to foreign authors the copyright therein secured to citizens or residents; 2, Granting authors the exclusive right to dramatize or translate their copyrighted works. To secure these rights the copyright must be recorded in the office of the Librarian of Congress not more than fifteen days subsequent to its publication in the country of its origin, and two copies of the best American edition must be deposited in the same office within three months after the date of recording. And in case the American publisher, after publishing, abandons the publication, the copyright becomes void; and during the existence of the copyright the importation of other editions is absolutely prohibited, and custom-house officers and postmasters are required to seize all copies entered at the custom-houses or transmitted by mail; but, in the case of copyrighted translations, the prohibition of importation shall apply only to other translations, and not to the original work, unless that is also copyrighted. The charge for recording is to be one dollar, to go to defray the expenses of lists

of copyrighted articles to be printed by the Secretary of the Treasury, at intervals of not more than a week, for distribution to collectors of customs and postmasters and possible subscribers at \$5 per annum; the material for these lists to be furnished by the Librarian of Congress, who is to have an addition of one thousand dollars to his salary therefor. Each volume of works of more than one volume must be entered separately, and new, revised editions of foreign books heretofore published may be copyrighted.

These two opposite measures, the reciprocity bill of the Copyright League, and Mr. Chace's bill, which is strongly tinged with "protection," both before the same Senate, awakened considerable discussion. Authors and writers generally naturally advocating the former (Senate bill No. 191), and the opponents of international copyright, as well as those in favor of granting a restricted right, uniting in favor of the latter (Senate bill No. 1178). Petitions, memorials, and other documents *pro* and *con*; were sent to the Senate Committee on Patents, and the committee, evidently in earnest in the matter of hearing all sides regarding this subject, held public hearings on January 28th and 29th, February 12th, and March 11th. These meetings were well attended by authors, publishers, and representatives from various book-manufacturing establishments, and the views of all parties were expressed without restraint. The American Copyright League, in defence of their own bill, introduced by Senator Hawley, were directly represented by Dr. Howard Crosby, A. G. Sedgwick, Esq., and Mr. George W. Green; while their bill was advocated in speeches by Mr. Henry Holt, the well-known publisher, George Ticknor Curtis, and James Russell Lowell, as well as by a carefully prepared "Argument," drawn up by the Executive Committee of the League, which was distributed to members of the Senate Committee in a pamphlet, and was also included in the printed appendix to the report of the committee. Mr. Dana Estes, of Estes & Lauriat, the Boston firm, and Mr. Horace E. Scudder, may be said to have represented the publishers' side of the question, both advocating international copyright, but inclined to favor a clause

in any law passed requiring the American manufacture of foreign books copyrighted in this country. It should be noticed, however, in regard to statements from publishers, that Mr. Holt's oral argument, as well as letters sent to the committee by George Haven Putman and Harper & Brothers, was unreservedly in favor of the "Hawley" bill. Mr. R. R. Bowker, editor of the *Publishers' Weekly*, whose earnest efforts in behalf of international copyright, extending over many years, are well known to the reading public, made a brief oral statement, and also submitted a concise paper (printed with the report), in which the subject is considered as affecting the interests of authors, the interests of publishers, the interests of the public, and as affected by the principle of justice. Mr. Gardiner G. Hubbard argued against copyright of any kind, and Mr. Henry C. Lea submitted a statement criticising the "Hawley" bill and advocating that of Mr. Chace, while Mr. Henry Carey Baird, in his statement, took the ground that no protection should be granted to foreign authors until our own domestic copyright laws are revised, in his words, "upon a rational and sound basis." Mr. Welsh represented the Philadelphia Typographical Union, which union claims to have drawn up the bill presented by Senator Chace, and he submitted some two dozen "Resolutions," etc., from other Typographical Unions advocating the latter bill. Mr. Roger Sherman, of Philadelphia, who boasted that he was the only defender of the rights of 55,000,000 of reading people against the "ring" of 200 authors, proved pretty conclusively that he was but the narrow advocate of his own interest in a single piratical publication; while Joseph R. Sypher, Esq., gave valuable testimony as a copyright lawyer, setting out the legal status of the "Chace" bill in particular. The last hearing was devoted to the statement of Mr. A. R. Spofford, Librarian of Congress, — a most valuable argument in favor of an international copyright law, in which he takes into consideration (1) the effect upon American authors and American literature of the denial or the granting of copyright between nations; (2) its effect upon foreign authors; (3) its effect upon American publishers and book-manufacturers; (4)

its effect upon American readers, or the great mass of the people, and he closes with the following words:—

“Finally, Mr. Chairman, there can be no higher aim in statesmanship than the endeavor to establish justice; for justice is the highest interest of all men. The authors appeal for what they deem a right long denied. Either we must hold that authorship is the only form of human labor that shall go unpaid, or we must grant a copyright that shall be paid *pro rata* by all who use the authors’ works. . . . If, as has been said, the policy of nations is enlightened selfishness, and the aim of the legislator is not justice, but expediency, the question recurs, is it expedient to foster a brood of merely cheap and common literature, at the expense of the great masters of English and American thought and speech? The book-manufacturing interests have enjoyed, for nearly a century, protection in every form; the book-writing interests now ask you to consider their appeal for some measure of protection,—an appeal seconded by the majority of the publishers and by the almost unanimous voice of the American press. By simple extension of the area of copyright, already granted by all the leading nations except our own, it is plain that the present worth of copyright to authors will be enhanced. If it is true that the chief glory of a nation is its literature, whatever Congress can do to promote and elevate that literature should be done. Beyond question, the just thing will be found in the long run to be the expedient thing, and the fact that we cannot do perfect justice should not deter us from doing as much justice as we may.”

The testimony upon the subject of international copyright thus obtained at the hearings before the Senate committee was reported stenographically and printed, making a pamphlet of 133 pages, of which several thousand copies were distributed by the committee and other persons interested in the subject. The same matter was also appended to the report of the committee submitted to the Senate by Mr. Chace, on May 21, 1886, accompanied by a new print of his bill, somewhat amended, which is given a new number as Senate bill 2496 of the 1st session of the 49th Congress.

The corrections in the new print of the “Chace” bill are largely verbal and unimportant: instead of fifteen days being allowed for recording title the record must be made not later than the day of first publication; “American edition” is emphasized to “edition

printed in the United States;” the clause to increase the salary of the Librarian of Congress is stricken out and provision made that he may employ an additional clerk at \$1,200 per annum to prepare the weekly lists of copyright entries; and the date set for the taking effect of the act is changed to the 1st day of July, 1887. The amendments of importance are the striking out of the clause which renders the copyright void in case the American publisher for any cause abandons the publication; and the rewording of section four relating to the copyrighting of separate volumes of works of more than one volume, and of revised editions of foreign works,—prohibiting the copyrighting of works of which one volume has been published before the act takes effect, or of books forming part of a series in course of publication at the time the act shall take effect. The effect of this amendment will be to exclude from the benefits of the act such deserving works as the “Encyclopedia Britannica,” the “International Scientific Series,” the “English Men of Letters” series, and the series entitled the “English citizen,” besides other valuable serial publications.

The report accompanying this amended bill institutes, in the first place, a comparison between patents and copyrights, and our patent laws as contrasting with our copyright laws. The following distinction is drawn between a patent and a copyright: “An invention for which a patent is granted is but an idea put in a mechanical form, but the subject of the patent is the idea or mechanical principle, and that the Government protects; whereas copyright does not secure any monopoly to the idea or thought, but only to the form of words or language with which the idea is clothed.”

And the report continues: “While it is true, as all thinking men will admit, that the influence of literature upon the welfare of the nation is and has been far more beneficent than that of mere invention, it is remarkable that legislation upon property in patents has proceeded much farther and upon a much broader basis than has that upon the subject of copyright. Herein your committee believe the people at large have suffered a loss. All governmental protection to property is based upon the inherent right of each individual to the fruit of his own labor. We recognize the rights of the

foreigner to be protected here in every kind of property except the productions of authorship.

. . . In so far as patents for the arts are concerned we put the citizens of all nations on an equal footing with our own. This was in the line with much of the legislation of the country, and in keeping with the general progress of international law, and that recognition of comity among nations upon which rests to a large degree that valuable and fructifying international intercourse the value of which is coming to be recognized by all the great civilized nations of the earth. The United States Government has recognized this principle in its treatment of all international questions save and except this one of international copyright.

. . . The United States alone, of all the great civilized nations which have made advances in literature, still refuses to recognize the principle of international comity as applied to the production of literary property. Your committee recognize the moral obligation of comity amongst nations, and believe that the best interests, material, moral, and intellectual, of our people will be promoted by adopting and acting upon that principle in the treatment of this question. . . . The theory accepted by some, that we may secure cheap literature which is beneficial to the people, by refusing to protect the right of the foreign author to his literary property, is, in the judgment of your committee, a mistaken one."

Having made this excellent argument in favor of granting copyrights to foreigners, the committee are thereupon necessitated to defend the restrictions upon such rights contained in the bill, which last, according to the report, "recognizes the paramount duty of protecting, first, the material interests of our own people, and proceeds so far only in securing the rights of citizens of other nations as that may be done without injury to vested rights in this country or without interfering with the income of our own labor, . . . and that, by its provisions, we carefully protect the American publisher and the American artisans who make the books in this country." But, in spite of this language, the assertion is reiterated in the report that the bill commended has nothing to do with the tariff, free-trade, or protection. The matter of prohibition of importation is twice referred to in the report, and stated to be "founded upon sound and strong reason;" but no reasons are given in support of the statement, the only defence of the clause being the following paragraph: "With this

provision the operation of this bill would be beneficent in its influence upon all these interests; without this safeguard a great wrong would be done to them." "The foreign author cannot complain," continues the report, "because we give him protection in our markets conditioned only that he publish here. The American artisan will be insured only that which he now possesses, the labor put upon the publication of foreign books. The American publisher and the foreign will both be protected, while the American reader, if he will compare the cost of books published abroad with that of similar books published in this country, the committee believe, will readily perceive that his interests will suffer no detriment. In order to secure all these interests no practical way could be found except the provision prohibiting the importation of copyrighted books." It is curious to recall in this connection, that on Saturday, January 27, 1872, at a meeting of publishers and others, at Philadelphia,—including Mr. Henry C. Baird and Mr. Henry C. Lee, who now find so many arguments in favor of the absolute prohibition of importation,—a protest was signed against an international copyright bill which contained a similar provision, because "it would enable the foreign author and his assignee in this country, by an absolute monopoly in the protection, to fix the price of his book without fear of competition." It would almost seem that the Philadelphians (who, it will be remembered, are the originators of this bill), convinced—against their will—that public sentiment in 1886 demands international copyright as simple justice to foreign authors, are determined in yielding to this sentiment to secure such absolute monopoly as they can, without regard to the cost to the American reader.

To sum up, the efforts in Congress to secure an international copyright law have now extended over a period of nearly fifty years, during which time twelve separate and distinct bills have been drawn up for the purpose of obtaining this measure, and they have been presented to the attention of Congress twenty-one times. Memorials and petitions, for and against, have been laid before Congress and its

committees in great numbers, more than twenty of these having been deemed of sufficient importance to be given permanent record in the printed Public Documents. Six reports have been made upon the subject by Congressional committees, four of these being favorable, and but two adverse. The twelfth bill, accompanied by a favorable

report from a committee of the Senate, awaits the action of the present Congress. This bill will undoubtedly come up in the next session, and there is still room for hope that the forty-ninth Congress will not finally adjourn without doing itself the honor to pass some measure securing international copyright.

APPENDIX

THE "CHACE" COPYRIGHT ACT OF MARCH 3, 1891

Notwithstanding the strong testimony in favor of international copyright, the Committee's report on May 21, on Senator Chace's bill was adverse, and it was ordered to be postponed indefinitely. On December 12, 1887, he presented a new copyright bill. It was supported by an unusual number of appeals for its enactment, and they were not only unusual as to number, but as to the quality and standing of the petitioners. A great number came from the faculties of colleges and universities throughout the country. The entire absence of petitions against the bill by the typographical people is noticeable, and was doubtless due to the inclusion of the typesetting clause of the bill requiring manufacture in the United States as a condition for obtaining copyright. Favorable recommendations by the typographers were now submitted from all over the country. Petitions and memorials endorsing the bill were also presented by both the Authors' and the Publishers' Copyright Leagues. On December 13, 1887, the American Publishers' Copyright League was organized with Mr. William H. Appleton as President and George Haven Putnam as Secretary; and during the year 1888, international copyright associations were formed in various American cities, including Boston, Chicago and Washington. On March 19, 1888, Mr. William C. Breckinridge, of Kentucky, presented to the House his copyright bill, which was reported from the Committee on the Judiciary on April 21, 1888, with an amended bill, and apparently received no further consideration, as no further action is recorded. In the meantime Mr. Chace, on March 19, had submitted a report from the Committee on Patents on his bill with an amended text, supported by additional statements made at a hearing on March 9, 1880, before the Senate Committee on Patents, fifty-two pages. With this report (S. 622) was reprinted the Chace Report of 1886, and the testimony referred to above, one hundred and forty pages.

The Chace bill was finally debated in detail on April 23, 24 and 30, and on May 9, 1888, and was passed by the Senate on the latter day. Its passage was at once notified to the House, which on January 23, 1889, ordered printed 1000 copies of the Chace Act of 1888, and on January 31, ordered another 1000 copies.

On April 21, 1888, Mr. Collins from the Committee on the Judiciary had reported his bill (H.R. no. 8715) with recommendation that it be passed by the House. On December 3, 1889, President Harrison's Annual Message contained the following brief reference: "The subject of an international copyright has been frequently commended to the attention of Congress by my predecessors. The enactment of such a law would be eminently wise and just." On December 4, 1889, Senator Platt, of Connecticut, presented a Bill to Amend Title 60, Chapter 3, of the Revised Statutes of the United States relating to Copyright, which is an amended draft of the Senate Act of May 9, 1888.* It was referred to the Senate Committee on Patents and was reported adversely from that Committee on January 21, 1890. Senator Platt's bill was presented to the House of Representatives by Mr. Breckinridge on January 6, 1890, and referred to the Committee on the Judiciary.

On February 9, 1890, the House Committee on the Judiciary held hearings, including testimony from the International Typographical Union Committee and representatives of the American Copyright League, which was printed. On February 15, Mr. George Everett Adams from that Committee reported a substitute bill (H.R. 6941). This bill was printed in full in the *Congressional Record* (51st Congress, vol. 21, part 5, pp. 4104-5). On February 18, 1890, Mr. Simonds from the Committee on Patents reported the bill H.R. 3812 and submitted a report thereon (H.R. no. 27); he also reported the bill H. R. 3914 with a report (H.R. 290) and submitted a substitute bill (H.R. 7213), which was the same as Mr. Adams' bill (H.R. 6941) and was referred to the

* 1889 (*December 4*).—A bill to amend title sixty, chapter three, of the Revised Statutes of the United States, relating to copyrights. Introduced by Mr. Platt. Senate bill, no. 232. Printed, 7 pp. 4°. (115)

[The text of Senate bill 232 was one submitted, by request, by Thorvald Solberg to the Conference Committee of the Authors' and Publishers' Copyright Leagues and the Typothetæ, and passed upon on October 24, 1889. Of the seventeen amendments suggested, thirteen were approved, three disapproved, and one withdrawn. The subject-matter of the bill occurs for the first time in its title in this print of it.]

House calendar. On February 21, the Senate proceeded to consider, as in Committee of the Whole, Mr. Platt's bill (S. 2221). Mr. Platt moved as an amendment the introduction of a substitute bill (H.R. 6941). This bill came up for consideration in the House of Representatives on May 1 and 2, when it was debated and amended, but on motion for third reading the vote was in the negative.

On May 16, 1890, Mr. Simonds presented a new bill (H.R. no. 10254), on which he reported from the Committee on Patents on June 10, submitting a substitute bill (H.R. no. 10881) which was printed in full in the *Congressional Record*, was referred to the House Calendar, debated and amended on December 2 and 3, passed on December 3, 1890, and was at once presented to the Senate for concurrence. In the Senate it was read a first and second time, and voted to lie upon the table. In the meantime, Senator Teller presented "by request" on December 29, 1890, "A Bill to Provide for the Compensation of Foreign Authors for the use of Copyright in the United States," which was not reported from the Committee on Patents of the Senate; but on February 28, 1891, was presented to the House by Mr. Lewis E. Payson, of Illinois, as an amendment of or substitute for H. R. no. 10881; but it was not voted upon. On February 9, 1891, on motion of Senator Platt, the Senate proceeded to consider, as in Committee of the Whole, the bill H. R. 10881. Amendments were proposed on that day, the bill was further considered on February 10, 11, 12, 13, 14, 17 and 18, and was passed on this last date. Senators Platt, Hiscock and Gray were appointed conferees to confer with the House and the bill was ordered reprinted as it passed the Senate. On February 28, 1891, the House agreed to a conference with the Senate on the Copyright bills; and Mr. Simonds, Mr. Buchanan and Mr. Cowles were appointed as managers. A conference report was submitted to the House on Monday, March 2, 1891; and after debate the House insisted on its disagreements, a further conference being voted. On March 3, several conference reports were submitted to both House and Senate, and debated there; and agreement finally being secured, the bill was voted on that date and was promptly signed by the President on the same day.

The so-called Chace International Copyright Act went into effect on July 1, 1891. It was the first step taken by the United States towards securing international copyright; the first step accomplished to extend to alien authors, not actually domiciled or resident within the United States, the rights and privileges accorded by our copyright laws. This very important and widely

felt change was accomplished by the enactment of nine amended sections of the Revised Statutes relating to copyrights. The Act of 1891 contains no direct affirmative statement of the extension of copyright protection to foreign authors; but this results was secured by dropping from the law (section 4952 of the Revised Statutes) the words which limited the exclusive rights accorded to authors of copyright works to "any citizen of the United States or resident therein." By this mutation of the text, any foreign author of the works named as subject-matter of copyright became entitled to the rights accorded by the Act upon complying with its provisions, provided he were a citizen or subject of a foreign state or nation which permitted to citizens of the United States of America the benefit of copyright on substantially the same basis as to its own citizens. The Copyright Act of 1891 provided explicitly "that no person shall be entitled to a copyright" unless he (1) files a printed copy of the title of his book, etc., or a description of a work of art, or (2) deposits two copies of such book, or other work, in the Library of Congress. The Act further provided:

"That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom."

In order to make this requirement of manufacture within the United States as effective as possible, the Act provided that during the existence of such copyright the importation into the United States of any article not so made "shall be, and it is hereby, prohibited." These obligatory conditions and formalities together with the requirement of compulsory manufacture in this country have prevented the United States from becoming a member of the International Copyright Union established on September 5, 1887.

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